

Newsletter of the Institute for Public Policy

# KYRGYZSTAN BRIEF



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*Bazarbay Mambetov:*  
**«Control over water resources must be seen as a key element of future power of Kyrgyzstan. We must influence the Central Asian politics» - p. 19**

*Bakyt Beshimov:*  
**“Kyrgyzstan is an intriguing country in post-Soviet Central Asia. The historical drama of the country is full of conflicts and crucial plots, mysteries and myths; it has more questions than answers. It is the most open country in the region, with strong civil society and freedom of speech. At the same time, it is the most disorganized country, with weak government institutions and an inefficient bureaucratic system.” – p. 2**

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## ABOUT IPP

**The Institute for Public Policy (IPP)** is an independent, non-partisan research and policy-making institution, based in Bishkek. Its goals are to develop and promote participatory approach in establishing public policy; to strengthen expert analysis in order to promote effective decisionmaking in matters of public policy and to create an independent platform for dialogue on public policy issues. The Institute provides expert consulting, research and surveys on Central Asian affairs, conflict management services as well as implementation of educational and cultural projects aimed at good governance.

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## KYRGYZ CROSSWORD

### *Bakyt Beshimov, Vice-President of the American University-Central Asia*

#### **A Country of Paradoxes**

Kyrgyzstan is an intriguing country in post-Soviet Central Asia. The Historical drama of the country is full of conflicts and crucial plots, mysteries and myths; it has more questions than answers.

It is the most open country in the region, with strong civil society and freedom of speech. At the same time, it is the most disorganized country, with weak government institutions and an inefficient bureaucratic system.

According to many experts, the country essentially did not realize itself as a state during fifteen years of independence. It still has not clearly found its position concerning main internal and external vectors of development.

Among the former Soviet states of Central Asia, Kyrgyzstan was the first to introduce a national currency, enter the WTO, and started land privatization. However, the advantages of some of these steps are not obvious. The economy is weak and vulnerable to serious external factors, and is damaged by corruption in addition. The government indeed cannot manage its huge external debt, which is why it fully depends on donor countries and international financial institutions.

Smart and dynamic Kyrgyz businessmen currently occupy medium and small businesses niches in Kazakh-

stan and Russia, leaving far behind the active part of the population in Uzbekistan and Tajikistan in understanding the mechanisms of the market economy. Most working age citizens are massively leaving the country in search of a better life. Thanks to their remittances, which annually amount to more than \$500 million, economic and social projects in the country continue to exist, and are even developing in some cases.

The population is strongly politicized; the most active part of it constantly participates in mass political events and does not allow the establishment of an authoritarian regime. In 2005, it became the only country in Central Asia to replace the system of rule by forceful pressure; it oddly presents elements of revolution and counterrevolution, *coupe d'état* and constitutional transfer of authority.

The nation is divided into two regions in political terms, but is united in the strive for better changes. The economically active population feeds the authority, and has lost all hopes of getting help from them in return. The authority steadily increases its level of life at the expense of the population, not understanding how to help people substantially. Kyrgyzstan is a country of paradoxes in which many unexpected things could happen.

#### **The Lessons of the Last Fifteen Years and of 2005**

During the first years of independence, it was generally believed that the country took a route for welfare, and expectations were high. The participation of people in political and economic life became more and more active, resulting in the emergence of opposition and establishment of a private sector.

However, there was an attempt to establish clan-based rule of one family at the top instead of promoting systematic and consistent transformation of the political system with an objective to increase the efficiency of governance as a whole. Naturally, this occurrence prompted the appearance of three threatening trends: 1) the growth of corruption in the governmental system and system of public affairs management, 2) the intensification of crisis between the executive branch of authority and the parliament, 3) the moral and professional degradation of the prestige of the judicial branch of authority.

The shadow economy became almost equal to the official one. The arrogant and empty way of life of corrupt officials and new bourgeoisie promoted the quick deflation of the moral values of the society, resulting in the moral degradation of the population's

majority, who began to live according to the principle that 'everything can be bought and sold.' The psychology of thieves, crooks and nepotistic leaders became prevalent in the society. Elections at all levels turned into shameless exchanges, opening a way to politicians without morality or principles.

By 2005, the country had a permanent president and had gone through many prime ministers, speakers, and oppositional politicians, but had never seen a true leader of the nation.

It is necessary to stress that the factor of leadership plays a decisive role in the destiny of any country. The history of both successful and failed countries proves this point, which can especially be seen in the history of post communist countries.

After the collapse of the USSR, the soviet party nomenclatura was the only source from which to form a ruling circle. A split in the Kyrgyz Communist Party in 1991 demonstrated that there was no strong leader, and regionalist politics openly emerged in the arena. It is for this reason that a member of the mid-level nomencla-

tura occupied the position of the presidency, someone who was able to mislead the public from the start by positioning himself as democrat and a progressive leader.

On the sly of anticommunist rhetoric, the top of the nomenclatura was eliminated from political life and replaced by a rattling mix of blood relatives and representatives of the academic nomenclatura intelligentsia.

At the same time, the one and only criterion to get access to authority was full obedience and personal devotion to the president and his family. It is not surprising that this criterion became both a basis to reinforce family rule and a trend towards the degradation of the ruling circle. Most people did not notice that the country fell deep in debt under the thick screen of loud promises and endless plans.

The unique natural resources of Kyrgyzstan turned into objects of shameless exploitation, robbery, and means of trade for the ruling circle and its associates. The Kyrgyz opposition was formed under conditions of growing discontent among the people with the method of rule and personal qualities of the president and his close associates.

The first group of opposition consisted of representatives of the intelligentsia, who began political activity during perestroika. The number of opposition later increased with the addition of representatives of marginal groups in the society. It seems that the social origin and level of political culture of the political elite gave birth to two types of opposition: ideological and pseudo opposition.

Pseudo oppositionists grew only on the basis of bare protest against the owner of the White House and his policies. They were always driven by only bare inter-

ests – to get into authority themselves by any means. Their number continues to increase from time to time with the addition of those people who have been stripped of opportunities to get rich at the expense of other people, and have thus become exploited themselves. Moreover, these people did not pay special attention to the doubtful origins of politicians' money. Such politicians never possessed idealism.

For this reason, it is no coincidence that some of them who have gained government power currently cannot change the essence of authority for the better; they are mirror reflections of their rivals of yesterday. It is logical that the property of losers passed into the hands of winners.

It is utopia to expect constructive politics in the form of alternative projects for the country's development and positive ideology from pseudo oppositionists.

In contrast, politicians who had certain a political philosophy and democratic commitments were not able to connect their political goals with the hopes of simple people. Now they are desperately searching for a cure against regionalism in order to find a way to reach the wider public. They have not succeeded in turning their ideology into a philosophy of the masses.

Thus, Kyrgyz oppositionists, not having a clear political plan, unity, or solidarity on the basis of principles, and also lacking a leader with firm democratic commitments, could not play a large historical role. When protesters brought them to the top of the political pyramid in March 2005, giving them a rare chance to become authors of a better history for people, they did not use it. After 24 March, 2005 the power of protesting people was not directed towards progress. Great efforts yielded little result...

**Look back at the past** *The Kyrgyz nation appeared in history as a union of tribes with an elected khan, the authority of whom was not hereditary. Tribalism in the political life of the Kyrgyz people played a large role over a long period of time, and did not allow the creation of a centralized state. Ethnic unity and regionalism gained important meaning during a period in which the political struggles of the Kyrgyz entering into the sphere of influence of (and a system of relationships with) despotic oriental states. Russia used intertribal and regional contradictions as an instrument of influence and colonial management. Soviet authority attempted to replace tribalism and regionalism with class struggle and to introduce an ideology of modernism into Kyrgyz society. However, it was not able to fully destroy remnants of the past. Tribalism has been reanimated in the years of independence, and manipulation by a regional factor has taken place for the sake of reinforcing personal power, instead of substantial attempts to unify the nation and search for nationwide ideology. Return to the spiritual ancestry and the roots of Kyrgyz statehood has remained in the shadow of greedy self-interests. In ideological terms, there is always a contest between truth-seekers like Toktogul and the high and mighty among the Kyrgyz people.*

In 2005, political life did not flow in a new direction of transfer from regionalism to ideological contest in politics. Conservative thinking, involving retrograded populism and world outlooks, and the political immaturity of political elite hindered the country from progressive development.

In many countries, progressive politicians, especially some outstanding leaders who had historically short terms, performed revolutions in the minds of their people and build a new beautiful world for all on that basis. Kyrgyzstan also has a chance, but the country is allowing it to pass. The system of governance remains



weak. The political system is in crisis. Confrontation between the executive branch of authority and the parliament have attained a permanent, dead-end character. The condition of the parliament discredits the model of a multiparty system and parliamentary form of ruling in the eyes of the population. Corruption and inefficient management of public affairs has destroyed the remaining hopes of the population after the change of authority. Neither the authority nor the opposition have a competent, consolidated position on any

### What we can expect in the nearest future?

The situation in the country and the condition of its citizens will depend on the policy of the White House and opposition, as well as on the level of participation in politics of the active part of society. Let us take a positive, desired scenario as an example – one which could be called the **spurt forward-overcome model**. The new Constitution has been adopted, and both sides agreed in general that this is a step forward.

The executive branch of authority and the parliament will seriously start to reinforce the political system and the basis of governmental authority according to the new Constitution, smoothing the contradictions and optimizing mutual relations.

At last, both sides will reach consensus in understanding the main directions in the development of the country. All politicians will become united and patriotic in lobbying the interests of nation, and will also clearly define their roles in the process and assume mutual obligations to observe the clear rules of the game of politics.

The opposition will acquire official political status and rights which are protected by laws, and will finally become a significant force in society. The body that will preside over reforms will consist of highly educated youth, honest professionals, and politicians. A real fight against corruption will begin, and stolen money will be returned to the treasury of government.

Economic freedom and efficiency will increase as the government promotes the growth of production, the expansion of exports, and the increase of goods turnover in the country. The government will set up a professional, non-confrontational foreign policy, achieve the understanding of donors, and take a favorable position on credit return. The advantages of this model are that it highlights a way to achieve systematic change and demolition of the conditions which give birth to self-interest and corruption. In addition, there are opportunities within the model for intellectual and ideological competition, which will result in forwarding the opportunities of the best minds and characters in the system of governance and econom-

of the principal issue of national or foreign policy. The HIPC program demonstrates this state of affairs best.

People do not have a leader; they have a tandem. There is combative opposition, many-headed and many-voiced, which still does not know what kind of society to build. In short, the historical ancestry and future of the country, the hopes and expectations of people are in the hands of an immature political elite.

ics, while limiting those of untalented grey impostors and robbers. However, transition to and realization of this model require historical thinking, great political will and a strive to serve to one's nation truly.

The other model is negative, and more likely. Let us call it the **full backtrack** model. If we proceed from reasons, background and dynamics of May-November events of 2006, and analyze behavior of three main political forces in the country (executive branch and its parliament satellites, opposition and politically active population), then grounds for the model's realization are more than enough. Main characteristics of the model are: a) full distrust between political opponents and scorn against each other; b) efforts to undermine resources of opponents by any means using governmental power mechanism; c) escalation of interregional tension by intentional use population's prejudices, exploitation of term of historical fairness and also parity of presence in government; d) formation of supporters' group on the grounds of regionalism. If the present parliament stops its work then the government will be in even more vulnerable position, the whole state authority will weaken, protest in politics will intensify manifold and all these may finally throw the country into chaos. Implementation of such kind policy will promote corruption in the economy, bandit redistribution of property and gradual decay of financial and investment system. A war of all against all in politics and economics will completely bring the country under the control of donors, creditors, rich neighbors, and the current disputes about the HIPC will appear as a very minor issue. The continuing foreign policy based on preferences the country will be isolated from main international relations actors and political leadership of the country will lose credibility on the international arena. Intentional incitement of regional confrontation, full fallback from sound compromise will results in forceful confrontation and separatism. The state authority will collapse, the society will completely come apart and there will be a search for a new state composition, with active participation of other countries.

Intermediate **Way to Nowhere** model is also possible.

There are also conditions for its realization. Mechanically, the country moves in neither a good nor a bad direction, but somewhere in an unknown direction. Meanwhile, there is a lot of noise about imaginary success. The authority imitates reforms and continues to bargain with donors, not having a clear perspective or fully understanding the consequences of the decisions that they take. They cannot pay the national debt, but at the same time, they are afraid of the HIPC Initiative. They keep the population ignorant about where and how credits disappear, and do not take real measures in the fight against corruption. The notion that 'in Kyrgyzstan, only fools and lazy people do not steal' will be even more topical. The moral degradation of the society will reinforce tensions and weaken government institutions further. In foreign policy, tactics of preferences, sharamanie, and nonobservance of obli-

gations will only intensify the neurosis and irritation of important partners, and thus a serious problem will emerge with a trust deficit. There will be a strange parity in politics: the authority will have a desire to overcome the opposition, but in the end no power to do so, and the opposition will not have a clear understanding of what to do with this authority despite its criticism of the authority. The parliament, more dead than alive, will try to drag itself through until the end of the term. New youth leaders and lesser-known politicians will try to create an alternative to the authority and opposition, hoping that existing elites will discredit themselves totally in the eyes of public by the next elections. Thus, we can arrive at the same point in 2009 as we reached in 2005 – running without moving.

We choose, or we are chosen.

## Political and Legal Analysis of the Changes in the Constitution of the Kyrgyz Republic

**Gulnara Iskakova, LLM, Associate Professor of Law, American University-Central Asia**

As a result of the many Referendums on changes to the Constitution (1994, 1996, 1998 and 2003), the system of government in Kyrgyzstan has turned into an awkward and ugly monster, wherein the President concentrates the authority that normally belong to the Parliament, the Ministries, and the Judiciary in well functioning democratic countries. The system has not worked, and all hope revolves around its "repair." Therefore, the demand for constitutional reform became the core concern of all the street rallies and demonstrations in 2005 and 2006. After ousting President Akaev, numerous efforts and imitations of efforts were undertaken to draft a Constitution that would satisfy all major politicians of our country. As a result of the pressure of rallies, which brought several thousand protesters to the streets in the beginning of November of this year, and the threat of a major destabilization in the country, the opposition and the President reach an agreement, and the Parliament hastily passed new Constitution.

facing civil war, our opposition did not dictate which clan should rule, but rather suggested rational programmatic ideas for the whole country, i.e. not power for the sake of power but power for reforms, for public good. According to Weber's widely recognized typology of power, part of the political elite in our country – the opposition – grew from the revolutionary charismatic type of leadership, wherein leaders rather than ideas are extolled, and developed into a modern, rational-legal Western type of power, in which binding ideas, rules and procedures govern, rather than people. Only this approach will lead to a legal state, protection of human rights, protection of private property, and differentiation between political power and private property (business). Secondly, the opposition demonstrated its ability to use consensus-reaching legal technologies as a way to avoid violence while conducting reforms, and behaved in such a way that it guarded against political radicalism on the side of both parties.

These events demonstrate a very good advancement among our political elite. Firstly, the opposition suggested rational, although somewhat undeveloped, ideas that should contribute to the modernization of our system (society and government). Unlike Tajikistan

However, the critical conditions surrounding the adoption of the new draft of the Constitution and the lack of expert assistance for the opposition during the drafting process have left their affect.

### Positive Changes in the Constitution?

It is believed that the new Constitution contains many positive nuances, such as granting permission for dual citizenship, moving the function of the arrest of citizens from the prosecutor's office to the courts, expanding of the terms for local judges from three to five years during the first term, and from seven to ten years for latter terms, and introducing a new body for selecting candidates for the position of judge – the National Council on Justice Affairs (although chairs,

deputies, and judges of local courts will now be appointed by the President only, while they used to be appointed with the approval of the Jogorku Kenesh).

Undoubtedly, a positive aspect of the new Constitution is a more powerful government (i.e. the Ministries), due to a wider elaboration of its competence: "The government shall resolve all issues of state governance excluding those authorities delegated to the compe-





tence of the President and the Jogorku Kenesh." The President is now deprived from the right to chair during meetings of the government or to cancel its regulation. If the regulation of the government contradicts superior legislative acts, then this issue should either be resolved by the Government itself, or in the court.

The new Constitution excludes such luxuries of the old list of Presidential powers such as the appointment and dismissal of the heads of administrative units and local state administrations, the ability to create and abolish the National Security Service, the ability to create and leader executive bodies beyond the government structure; the approval of single system of training, recruitment and funding of civil servants. However, these authorities were not transferred to the Prime Minister either. Therefore, if they are not mentioned in the Constitution, they might be assigned to the President in the laws. Moreover, all laws continue to function according to transitional clauses (see below).

Dismissal of the Parliament is now only related to the issue of trust in the government and formation of the government, whereas before the reasons for dismissing the Parliament were practically unlimited – the President could dissolve the Parliament in the event of any crisis caused by contradictions between the Jogorku Kenesh and any other branch of power. Here one can point out that the formation and dismissal of the government has been the usual cause of conflict between the President and the Parliament.

The President can still pass decrees, but they will not have the force of a law as before – as in the case of the delegation of legislative authorities by the Parliament or the dismissal of Parliament. Now Presidential decrees should not contradict the laws of the Parliament; the Constitution eliminates delegation of authorities as well. These are positive changes. However, in systems where executive power is two-headed there is usually a law that Presidential acts should be signed by the Prime-Minister, because he who signs the decisions bares responsibility for preparing and implementing

those decisions. The government does not need these decrees for state governance or the implementation of legislation; the government has apparatus for drafting such legislative acts. Sustaining two Apparatuses (that of the President and of the Government) is considered to be a luxury even for countries richer than Kyrgyzstan.

Exclusion of an unprecedented threshold for overcoming a Presidential veto (four-fifths of the members of Parliament) and of a ban for six months to a year on considering bills to which the President has objections are also positive changes. However, a requirement of two-thirds of votes is still significant. Therefore, it will still be difficult for Parliament to pass a bill that does not suit the President. The presidential veto is needed to keep the Parliament from making hasty decisions regarding draft legislation, but a simple majority for overcoming the presidential veto would be sufficient, since law passing is the main function of the Parliament and not the President.

Most importantly, the President can still independently call referenda, which allows him to make decisions or pass laws to which the Parliament, the legislative body, objects. Unlimited right of the President to initiate Referenda is not practiced anywhere else in the world outside of Kyrgyzstan, some NIS countries, and Sri Lanka. This right is usually limited, or does not exist at all.

Some norms about authority of the President were simply transferred from the chapter on Presidential authority to the chapter on executive or judicial power. Based on the new Constitution, the President recommends candidates for the position of the Chair and Deputy of the Constitutional and Supreme Courts to the Jogorku Kenesh, i.e. presidential authority is still there, but the list looks shorter in the chapter on Presidential Authority. Meanwhile, the mentioned authorities do not influence the nature of relationship between the President and the Parliament or the degree of their accountability to the public. Selection and implementation of the conceptually integral approach is more important than the number of authorities of the President in the Constitution.

### **Challenges and Solutions for Systems with Popularly-Elected Presidents**

The main issue with a popularly-elected Presidents lies in the conflicts between the President and the Parliament, because both of these bodies receive a mandate from the entire nation and can speak on its behalf. Cases when the President does not have the support of the majority of MPs lead to confrontation between the two. In many countries, conflicts between these bodies often lead to irresolvable political dead ends, Constitutional coups, and even Civil Wars.

In addition, the relationship in the system of power division in our country is complicated by the

presence of double-headed executive power and contradictions between the President and the Prime Minister, as both of them have the right to exercise executive power (state governance).

To evaluate all existing variants of systems with publicly-elected presidents, qualitative and quantitative research has been carried out on the number and magnitude of Presidential authorities<sup>1</sup>. This research demonstrated that two types of systems with publicly-elected presidents are "safer": 1) presidential systems – those in which the different branches of power do not de-

pend on each other (i.e. the president cannot dissolve the Parliament, and the Parliament cannot dismiss the Executive power), but with weak presidential legislative authorities, and 2) Prime-Presidential systems – those states where the branches of power depend on each other (the President is eligible for dissolving the Parliament, and the Parliament can express a vote of no-confidence in the government), but at the same time the President cannot dismiss the government<sup>2</sup>.

The names of the various systems of government organization do not reflect who is stronger, as many mistakenly believe. For any type of a government, the most important issue is who can sack the Government members (the Ministers, including the Prime-Minister) from their positions. The government is responsible for

overall governance of the country; it implements laws and accounts for the economy and safety of the citizens. Economic reforms and overall well-being mainly depend on the work of the government. In a Parliamentary system, the Parliament can dismiss the government, and in a Presidential system, the President can.

Any system of government organization should meet two main criteria:  
I) The system should delegate the responsibility for state management to one of the two publicly elected bodies (either the President or the Parliament), i.e. for the decision of dismissing the Government.  
II) Conflicts unavoidably emerging among various branches of power should be resolved by reference to the procedures of the system, which is the key to its durability. Thus, the Constitution should provide rules and procedures for resolving conflicts.

### Did the System of Power Organization Change in the New Constitution?

The main issue in any system is the issue of responsibility for the work of the government. "The government in its activity is responsible and accountable to the Jogorku Kenesh," states the new constitution. However, this responsibility and accountability is limited to the annual report of the Prime Minister to the Jogorku Kenesh. Based on the results of the annual report of the Prime Minister, the Jogorku Kenesh can express no-confidence in the Government by popular vote, true, but the President has a right to disagree with the decision of the Jogorku Kenesh. In the event that the Jogorku Kenesh will repeatedly make a decision of no-confidence in the government, then the President can choose to announce either the dismissal of the government or the dissolution of the Jogorku Kenesh.

The name of the system of governance in the Kyrgyzstan remains the same as when it was first introduced in 1993: "Presidential-Parliamentary." This is a hybrid system, which means that in this system neither the President nor the Parliament is responsible for the work of the government. Both of them have authority to influence the dismissal of the government. The President dominates in this system, but neither of them is responsible for their authority. Although the President makes the decision in the end, the majority of people think that the government is accountable to the Parliament as well.

Our neighbors, Russia and Kazakhstan, also have hybrid systems and similar rules on dismissing the government. However, there is a difference between us and our more economically secure neighbors. They have the resources to:

- Satisfy the financial requests of the political elite (they have what to divide)
- Sustain punitive bodies and intimidate the opposition
- Feed the Mass Media and NGOs

- Provide the people with bread and circus
- Not depend on international donors that support an independent media, and NGOs and demand implementation of democratic reforms.

An economically backward country cannot afford such cumbersome, non-functional systems that are foreseen in our Constitution. This system is cumbersome because it simultaneously supports two non-working apparati – the President's and Government's. Moreover, it does not function, because neither the **President nor Parliament takes responsibility for the work of the government. Based on the new Constitution, the President will continue to avoid taking responsibility for the work of the government and blaming the government or Parliament for all problems. Furthermore, the Parliament will to complain about the vast authority of the President.** Most importantly, **this system does not foresee any mechanism of resolving this conflict between the President and the Parliament.** If the majority of Deputies do not support the President, they will always conflict with each other, and the government will always end up as a scapegoat. We already had a government of this kind.

If the system foresees a publicly elected President and also a position of a Prime-Minister – as in our country – it is recommended for the Parliament to handle the issue of dismissing the Government, as is practiced in France and Poland. **The difference of these systems from ours is that the President must dismiss the government if the Parliament expresses a vote of no-confidence.** Besides, in both Poland and France, many of the authorities that our president has are given to the competence of the Prime Minister, including counter-signing presidential acts and the right for legislative initiative (except for the President in France).

<sup>2</sup>Definitions of the government types and differences between them. for more information see work: Iskakov G.T. Elections and Democracy in Kyrgyzstan: Constitutional design of President – Parliament relationship. – Bishkek, 2003.





It is considered that the main achievement of the new Constitution is that the Parliament will be responsible for forming the Government. However, **this is far from being true.**

“The government is formed by the political party that gains more than 50% of the total number of Deputies elected by party-list,” states the Constitution. This statement has two significant flaws.

First, this 50% out of the forty-five seats allocated for party-list makes up 23 seats. Based on mathematical and psychological principles of party-list (PL) practices, no party will be able to gain this number of seats in the course of fair, just, and real elections. Only unfairly high election thresholds (from the point of view of all other 60-70 parties) and a significant usage of administrative resource might provide this number of seats to one party. Most likely, this victor will be the party of the current power since it is in charge of almost all media and administrative resource in the country. To what will these elections lead? – Events similar to March 2005.

The second flaw is that no other Constitution in the world states that a party forms the government. The government is legally formed by the Parliamentary majority, which is politically made up by the deputies of parties. However, this last point is not stated in the constitution, because experiences and election results are much more diverse than the authors of the constitution can picture. One should not try to fit into a narrow framework that which does not fit there.

The Constitution further states that if no party gains more than 50% of the number of Deputies of Jogorku Kenesh elected by party list, then the President firstly identifies a party among winners in the Party-list elections. If that party then fails, the President may assign **any party that participated** in elections to form the government. In general, the President can grant this chance twice to different parties on his consideration.

In the event that none of these three parties can form the government in the timeframe provided in the Constitution, **then the President can dissolve Jogorku Kenesh and form the government himself.**

Therefore, in the best-case scenario, the will of twenty-three Deputies will determine the government. In the worst case, the will of an unknown party or a so-called “party” with no seats in the Parliament will become obligatory for the remaining 67 Deputies! Meanwhile, we are talking about distribution of Ministerial Seats – power, influence and money – high stakes! How can the Deputies of Jogorku Kenesh that won on the nation-wide elections agree with the

composition of the government offered by a party that has no (or few) representatives in the Parliament, abandoning those people proposed by the party?

The authors of this constitutional story might have thought that the President would be constructive and would try to reach an agreement with the Jogorku Kenesh. However, the past practices of cooperation by our Presidents with various compositions of the Jogorku Kenesh demonstrate that they are strongly mistaken. Besides, it is worth remembering the cases of leaders of advanced Western European democracies:

Gerhard Schroeder, former German Chancellor, had long resisted joining the Coalition to be led by Angela Merkel, whose party won over 50% of the seats in the Bundestag – the German Parliament! Probably many remember his furious face during negotiations, and the tears during his seeing-off broadcasted on national television. Italian Prime-Minister Silvio Berlusconi also persistently and extensively disputed the results of the last parliamentary elections, and refused to free his seat.

With a significant presence in the Parliament of Ukraine, the Party of Regions of Yanukovich faced famous challenges during the long-lasting and intense negotiations with other parties while forming the government. Witnessing challenges and threats over the Ukrainian Parliament, several Russian Media outlets gloated over the new Constitution of post-revolutionary Ukraine. The party of Yulia Timoshenko was ready for the Parliament’s dissolution and new elections just to disagree with the proposals on the composition of the government made by Yanukovich.

These examples all involve pressure by party leaders that received a significant majority of seats in the Parliament based on election results. **With the election system that has been created in the Constitution of Kyrgyzstan, there will never be a party with a clear majority in the Kyrgyzstani Parliament** (in the case of free and fair elections). In Russia, a similar mix of party-list – popular vote was used. Examining the results of several elections in Russian, we can anticipate that single-mandate districts will not lead to the enlargement and coalescence of parties in our country either, since the same parties will not win in the majority of single-mandate districts – there will be too many parties. Neither will the forty-five seats allocated for the party list help to create a parliamentary majority, since these seats will be divided between at least five parties at the election threshold of 5%. In other words, hardly any party will receive the agreement of the majority of MPs for their composition of the government.

When the third party proceeds to form the govern-



ment and the Jogorku Kenesh faces the risk of dissolution, the designated party might be underrepresented in the Parliament, a hardly-known “pocket party” of the President. For example, the President can assign this task twice to parties incapable of forming a government so that on the third attempt, under the threat of dissolution, he can force newly elected Deputies to form a government that is pleasing to him.

Since the President designates a party of his choice to recommend for his approval a candidate for Prime Minister within fourteen days of designation, and then to form a government and identify its structure not later than another fourteen days after the approval of a Prime Minister (a total of twenty-eight days), eighty-four days might be required just to form the government, as this process can be repeated up to three times! **Most importantly, however, the President can dismiss the Prime Minister, any other Minister, or the entire Government independently and at any time.**

The nation will observe the torments of the Jogorku Kenesh while attempting to form a government that they choose for themselves. It will be torment and punishment for the entire country. **With this new Constitution, we acquired preprogrammed conflicts in the system of governance, and therefore in the country itself.**

The right to allocate the budget of the country usually belongs to the highest legislative body. Starting from 1998, our constitution has required changes to the laws regarding the budget and draft bills, foreseeing an increase of expenses or a decrease of budget income can only be introduced to the Jogorku Kenesh and passed with the approval of the government. This requirement was fully maintained in the Constitution of 2006, which means that the Jogorku Kenesh is not eligible to set, for example, tax benefits or pensions, allowance rates, etc, without the agreement of the government. In other words, the budget is in the competence of the executive branch.

To prevent an increase in budget expenses and to avoid Parliamentary unpredictability, Constitutions sometimes set some limitations on the budget authorities of the Parliament. For example, the government might set the upper boundary of overall expenses within which the Parliament may introduce its changes, or the Parliament might be able to increase expenses only if it identifies new sources of income. But giving such extensive budget authori-

#### Transitional Clauses of the Constitution.

One of the articles states: “Legislative acts that are practiced until the Constitution comes into effect are to be practiced until their revocation or until they are brought to full alignment with the Constitution.” In oth-

ties to the government, so that the Parliament cannot plan or change the budget without its agreement, does not exist in any other system but Kyrgyzstan.

In the end, we should briefly highlight **weak legal style of the Constitution**. The text lacks the correctness and integrity of commonly-used terminology, points of style, logic, and consistency. Such weaknesses are obvious even with a quick glance at the Constitution.

For example, the article devoted to procedures of forming the government (the next article contains a continuation of these procedures) suddenly encloses two clauses about the dismissal of the Prime-Minister, the government, or its individual members, upon their petition, that is either accepted or declined by the President (Article 69). The text uses different terms regarding the same notions. For example, in some places it reads, “a decision about dismissal” of the government, and in others, “a decision about a vote of no-confidence.”

The Constitution should regulate the most important issues of a single order (of a single importance or level of significance). Our Constitution does address important constitutional-level issues, such as “The procedure of elections of the President are defined by the law.” Meanwhile, issues of much less significance are also provided in the Constitution, such as “The number of candidates for the President’s office is limited. Candidates running for Presidency must be registered persons having collected at least fifty thousand signatures.” Such a practice was done on many issues. Regarding the Deputies of the Jogorku Kenesh, for example, there are sanctions balancing the Deputy’s mandate with other jobs and entrepreneurship. Similar restrictions on the President were taken out with no reason.

The phrase that elections are to be conducted “based on universally equal and direct electoral rights with by secret ballot) is repeated **four times** in the Constitution, in Articles 1 (about general elections), 43 (about presidential elections), 54 (about parliamentary elections), and 90 (about local Kenesh elections) – as an incantation.

The phrase “of the Kyrgyz Republic” (inheritance from the Constitution of 2003) is encountered 585 times in the text. It takes up two pages of the text. How much time will this phrase take away from lawyers, students, and professors who attempt to read and interpret the Constitution? As if someone reading or using the Constitution of the Kyrgyz Republic might think that it is talking about the President or Government of Kazakhstan or Russia, or the Jogorku Kenesh of another country. Constitutions of other countries do not have this feature.

er words, existing legislative acts are valid “until they are brought to full alignment with the Constitution.” Therefore, they have legal force even if they contradict the Basic Law of the state. Such statements put all





law-enforcement agencies, including courts and other state bodies, in a completely ambiguous situation, which might lead to free interpretation and application of norms contradicting the Constitution. Moreover, such a situation will result in even bigger distrust of the courts on behalf of citizens, as well as further conflicts between higher-level government institutions.

In this case, it should have stated, "Legislative acts that are practiced until the analogous parts of the new Constitution comes into effect are to be used in so much as they do not contradict the Constitution." Revocation or modification of acts is a natural way of systematizing legislation, and does not need a special note in transitional clauses of the Constitution.

The transitional clauses further state that, "Laws and other legal acts should be brought in compliance with the current constitution not less than six months after it comes into effect." Ideally, the systematization of legal acts means the abolition of contradictions and gaps between them. However, the presence of contradictions and gaps in the legislature does not mean that lawyers using these norms will refuse to work on legal issues or solve them in an illegal (or incorrect) manner, referring to the indicated natural flaws in legislation.

This is already the fifth change in the Constitution since its adoption in 1993. Russia for example, also adopted a Constitution at the same time, and has not changed it since then. Due to on-going and inconsistent changes to the Constitution, our poor country compensates the work of numerous legal services of the Government focusing on the so-called matching of current legislation with the Constitution. In our country, we do not follow laws. We write them, adopt and change them, and always speak about their imperfection, but we do not know how to apply them. From within forums on the highest level – national and international conferences – to the conversations of taxi drivers and meetings on the street, one can hear about need for improved legislation.

Frequent changes of major "rules of the game" initiated by President Akaev formed infantile, relativist attitude towards all laws on the part of the Deputies of Parliament, the citizens and major politicians. Symbolically speaking, the "game" cannot start or lead to specific results due to these on-going changes made to its "rules." Frequent changes to the Constitution are accompanied by even more frequent, and mostly irresponsible, changes in the current legislation.

Politicians understand that the purpose of their political activity is not accountability to the public for the results

achieved by the government, i.e. during the "game," but changes of the "rules of the game." Everyone considers it normal to criticize and question the fundamental laws of the state, as well as to suggest changes and participate in adopting them. This circumstance results in a situation in which the line between expert judgment/competence and political tricks, between writing laws and implementing them, is lost. The entire society, following its political leaders, has fallen into a chasm of irresponsibility and attitude towards everything, including state management, their responsibilities, and laws – as to temporary and transitory phenomena.

Such an attitude to laws has resulted in a general deformation of legal consciousness, under which even lawyers not only practice criticality, but also teach future generations to criticize the approved state norms rather than to apply the law. The best case would be to identify problems and contradictions in legislation and recommend new rules, instead of resolving petty life conflicts within the legal framework. Naturally, law-enforcement agencies and courts could not avoid the universal "intoxication" by imitation of activity and responsibility. For now however, with the new Constitution we re-acquired the old system with an irresponsible Parliament, an irresponsible President, and rules that generate conflicts between the President and Jogorku Kenesh. We will not only have to match the current legislation with the constitution, but will have to continue changing the Basic Law further.

**P.S.** *The Constitution, according to the transitional clauses, is valid starting from the day the President signed it, that is, 9 November 2006. However, the text of the Constitution has not been officially published yet, although discussions have been going on for one and a half years, and the President had already prepared three drafts (the October 2005 versions of Beknazarov's working group and the President's own version submitted to Parliament on 30 October 2006). This analysis was based on the text of the Constitution that appeared on the websites: [www.gov.kg](http://www.gov.kg), [www.akipress.kg](http://www.akipress.kg) and [www.24.kg](http://www.24.kg) (news agencies). At the time this article was finished, I received a scanned version of the Constitution's text with signatures. According to that draft, the President (and not the Parliament) approves Ministers, while the Parliament approves only the structure of the government. If that is true, at least two things are not clear: First, if President approves the government, for what reason can then President dissolve the Parliament? Second, what has been improved then, if the mechanism of dismissing the Government remains the same – the President solely decides everything – and the mechanism of forming the government is not the same as demanded by the main opposition leaders?*



## Roundtable transcript

## THE NEW CONSTITUTION: POLITICS OR LAW?

**Date:** November 15, 2006**Location:** Institute for Public Policy**Moderator:** Muratbek Imanaliev, president of the Institute for Public Policy

Roundtable participants:

1. Aida Salyanova, Head of the department of the Jogorku Kenesh Committee on constitutional Law, State Structure, Legal Reform and Human Rights.
2. Galina Mukambaeva, Head of the Law and State Theory Department of Kyrgyz State University, Doctor of Legal Science, Professor
3. Gulnara Iskakova, expert, Kandidatskaya of Legal Science, Professor
4. Zainidin Kurmanov, UNDP expert
5. Nurlan Sadykov, Director of the Institute for Constitutional Policy
6. Suerkul Kosakov, Dean of the Law Department at Kyrgyz State University, Professor, and Honored Lawyer of the Kyrgyz Republic
7. Tamerlan Ibraimov, Director of the Political and Legal Research Center

**Muratbek Imanaliev:** I am happy to see that you found time to participate in our round table to discuss issues related to the adoption of the new constitution. The theme of our meeting is "The New Constitution: Politics or Law." In my opinion, this process is still far from completed, and what will prevail in the end, as it is said, only time will tell. Obviously, the political arena is still not free from vestiges of the past; discussions are ongoing – not only about the constitution and not necessarily about political issues. Today, the opposition is already demanding the dismissal of the government. Both parties are continuously speaking on TV. I think that there are two significant aspects of the way the new constitution was adopted. One is the political component. The events taking place on the square forced both parties to reach a compromise, and a compromise means only semi-satisfaction of hopes and demands. The constitution has been passed in such a short amount of time (and that is not only the opinion of local experts, but also of those in the West and in the East) that observers did not even have time to track who was responsible for what legislation. The second aspect is that of the constitution as a legislative act. Today, together with experts from our country, I would like to discuss what we passed. Many of you have already indicated in the Media and on the Internet that the foundational document of the state is full of flaws, which might result in a new coil of confrontation in the political and legal sphere.

I would like to know the opinion of our guest who works in the apparatus of the Supreme Court. How did it all happen and what did we pass?

**Aida Salyanova:** It is difficult for me to comment on the situation which occurred. Currently, we have a specific question: law or politics? Certainly, with great disappointment, I can state that politics took over in this situation. Although we claim to have a state governed by rule of law – that law should prevail over power, while power should follow the law – the events that

took place clearly demonstrated that exactly politics is a higher priority than rule of law. The haste and pressure of the process through which the constitution was passed is yet another proof of this circumstance. We got what we got. I agree that there are many contradictory aspects that are not in concurrence with it each other, for example, the authorities of the Jogorku Kenesh [or JK; the parliament] listed in the article 58 and authorities of the president listed in the article 46. Contradictions exist even within one article, let alone inter-article contradictions. In any case, (and many are already speaking about it) the introduction of further changes to the constitution is inevitable. Simple adjustment of laws will not be sufficient, because many institutional aspects are already built into the constitution.

**Gulnara Iskakova:** We have found ourselves in such a ridiculous situation that it is not even comfortable to speak about it. We are citizens of this country; we are experts in this sphere. We did our best to participate in the discussion process: some of us designed drafts; others participated in parliamentary hearings with the conclusions of experts. Finally, we ended up with a constitution without special explanations, although they say it is based on the draft produced by the first constitutional Council. Some things were done in a complete hurry; some new norms appeared...

Today, it turns out that formation of the government and the work of the highest levels of government, in compliance with the new constitution, might lead to a continuation of past conflicts. We are changing the constitution for the fifth time since our independence! In Russia, the constitution was adopted in 1993, contemporarily with us, but they have not touched or changed it since then. Here it is going through changes for the fifth time. Just as we were going to finish it last time, the best experts, including experts from the Jogorku Kenesh, cannot help but say that it needs to be changed again. What do we look like in the





world's eyes? It is a pity that we, citizens of this country, experts in this sphere, receive such a constitution.

**Nurlan Sydykov:** I already commented yesterday that even the formation of the personnel of the government engages three subjects based on the constitution: Jogorku Kenesh, the Prime Minister, and political parties – even here we have contradictions. Do you remember the question of depoliticizing the system of staff appointment of the judges of local courts? The president appoints local judges upon the nomination of the National Council on Justice Issues, but at the same time, we see that function of the JK to approve the judges of local courts still remains in the new constitution. There are many of such contradictions. However, the fact of the matter is that we still have not seen the official version; amendments have not been published anywhere. Our expert community should be very cautious in commenting on the changes. We received what we have in a rush, and maybe the role of the expert community is very important here. All of us have a clear understanding of what happened, but we should not criticize it groundlessly, because stability in society depends on us as well. Our attitude can influence the situation in the republic because we can unintentionally support reactionary forces.

**Suerkul Kosakov:** We don't know yet whether the constitution was adopted legally or not – this is the most important question. Yes, it was signed and it states that the document comes into effect as soon as it has been signed. According to the current constitution, however, article 96 about the introduction of changes and amendments still remains – foreseen and unchanged. No one has changed it or intends to change it. I spoke about this on TV yesterday and said, “to avoid the possibility of the document being called anti-constitutional or depicted as a document passed against the constitution, this issue should be resolved within three to six months.”

From a political point of view, I think that the constitution has been passed. From the legal aspect, however, the final word is yet to be said, and no one has the right to ignore the legal aspect of formalizing the adoption of the constitution. That is the main contradiction; or as experts say, if we want to live with this constitution, the contradictions should be eliminated. As the Constitutional Court finishes reading it, it should be ratified once again upon discussion. Otherwise, it is up in the air raising questions. It is good that we reached a compromise; maybe someone has lost some authority and the authorities of other have increased; whether we agree with some changes or not, the issue about the adoption of the constitution remains. I am not even mentioning the non-observance of some rules of legislative technique: e.g. one style, etc.

It seems that finally, for the first time in fifteen years, the Constitutional Court should say its word. Member

of the Constitutional Court, the Chair in particular, should not have been present at the Constituent Assembly that night. I do not want to criticize these individuals, because it is a collegial body and decisions are made collegially, but I simply want to state that it is time for the Constitutional Court to say its word – to say at least “Let's pass the constitution in compliance with the constitution.” As I said on TV, it is good that a referendum was not organized. Otherwise, we would have violated the constitution. Passing a constitution by two political parties may be constitutionally correct, based on the article 96 of the current constitution.

**Galina Mukambaeva:** So has the constitution been signed or not?

**Gulnara Isakova:** Usually, laws allocate space for signatures; I believe that this procedure should be observed and a new edition should be sent to the president. Possibly, signatures indicate support for the idea, i.e. it was initiated by members of the commission and there are signatures of all the borders.

**Galina Mukambaeva:** Having read the text of the bill about the new version and having looked through the transitional provision, I did not see the words “new edition.” The provision from 2003 stated everywhere “new edition of 2003.” We do not have the words “new edition” anywhere, although the law is called the “Law about the New Edition.” The signatures are missing in the allocated places. What happened in the end? Was the law signed and brought into effect, or was it just a theatrical gesture? Was the legal form of signing the law observed?

There are two scenarios. The first: if legal aspects were not observed and the law did not come into effect, then there is a vacuum for some further actions or events. The second scenario: if the law is legally recognized in its new edition, then official statements about it should be published in the mass media so that society would not have doubts. Currently, nobody can answer this question. Thus, we should ask it once again and resolve it once and for all.

Since we have gathered at this round table, I would like to state the following: when we, experts, spoke, television did not always broadcast it. Therefore, the public was unaware of the things we discussed; it did not matter to anyone. Our conclusions did not have any meaning, as other hot political processes with the participation of the president were occurring at the same time. We did not count on the attention too much either, but we hear and know each other and understand each other's positions of. We also know the positions of the civic sector, state structures, and the opposition. I think that we have the most convenient parliament in the world, because it is not difficult to “win the favors” of thirty-eight voices in favor of some decision. My most favorite draft was that of Mr. Kulov, which foresaw a parliamentary form of



government. However, I doubt that in the current social and political situation, the parliament can raise its head and solve its own problems. We need 3-5 years to switch to Kulov's draft. Without a party majority, the parliament cannot form a government and, as expected, we cannot shift to the parliamentary type of government. Still, all those demonstrations have the support of people, and tension grew so much that the impossible is becoming possible. Today, based on the new edition, we have a parliamentary style of government. Theoretically, the parliament can form government. From this point of view, maybe it is indeed a victory.

However, as was repeatedly stated, there are many inconsistencies. Perhaps, at a quick glance, they do not seem to be of a radical nature, but the matter comes down to the authorities of all three branches of power. As a result, the Government wins, because it is formed by the parliament, is not responsible in front of the president, and manages the internal affairs of the state. Executive power is formed by a publicly elected body. Technically, the state could make it without the parliament. Therefore, if the level of political literacy of the people, the level of public observance of laws was so high that experts and specialists were assigned to draft legislative bills, the parliament would not be needed. We should not be afraid that the president will usurp power. Nowhere in the world is there a situation where the president does not usurp power, and where the parliament does not work on its personal issues and lobbies – it simply does not exist.

**Tamerlan Ibraimov:** Indeed, the procedures established for the adoption of the constitution were not followed, and it is early to say that we received a new constitution. Not one of us dealing with this issue has seen a signed and published version of the constitution. There is a concern that the final version will be amended and changed. The legitimate question of the system of check-and-balances was raised. We had a constitution where the president was very powerful, and at the same time was not responsible for the activities of the government, because both the parliament and the president participated in the process of forming the government. In the new constitution, there is a norm that the government reports to the parliament. A more detailed analysis of the norms describing the process of forming the government and its responsibilities gives the impression that this norm is purely declarative.

What do we have such a great difference between de jure and de facto? We have the following mechanism: the parliament, consisting of ninety deputies, made up by 50% single-mandate districts and 50% party-lists. The right for forming the government is given to the party that won 50% plus one of the seats (the constitution states "a party," which surprised me, because in countries with a parliamentary form of government, the constitution always states either "the parliamentary majority" or

"the coalition majority." The word "party" is not used, as it is some type of a political term, and is not used in the legal sphere. In other words, the use of this term is something new, invented by our lawmakers, possible by the president). In fact, twenty-three deputies will receive the opportunity to form the government. The rest of the sixty-seven deputies will sit and watch, because nothing depends on their opinion. Thus, the parliamentary minority gets a right to form the government. They receive the right to recommend candidates for the position of the Prime Minister for approval, and that is in the best case. Then, if the winning party fails to form the government and approve a Prime Minister, the president gives this right to another winning party. Again, what does the phrase "party that has won the elections" mean? Is it a party that has won one seat and was placed first, second or third? It is not clear what this term assumes. Theoretically, a party with one seat in the parliament could receive an opportunity to nominate a Prime Minister, and that is still not the worst case yet.

The third stage goes as such: even if this party could not form the government, the president has the opportunity to select any party that participated in elections, which in my opinion is nonsense, as this party does not have to win any seats in the parliament, but based only on its participation in the elections is theoretically allowed it to propose candidates for the position of Prime Minister.

Finally, the fourth stage: even if this party fails to form a government, then the president himself forms the government and dissolves the parliament. What this means is that we have a situation when, in the best case, the parliamentary minority rules this issue and appoints their Prime Minister. Naturally, the parliament will hardly agree with such a mechanism. The parliament has the choice of self-dissolution. They must either dissolve themselves if they disagree with the position of the minority, or tolerate it. Here, it seems to me, a serious conflict is built into the work of the parliament. We expected the new constitution to introduce some mechanisms of conflict resolution, but here we see a time-bomb.

**Zainidin Kurmanov:** If we are only discussing whether any progress was made, then we are undoubtedly moving forward. Have we ever lived observing the law? We have never lived following the law. It is a new concept for us; in the current situation, we are not living according to the law either. We live guided by politicians and emotions. The constitution reflects the emotional level of our legislators and politicians, including the president. We are not to blame for this chaos at all, because officials are elected to avoid chaos. Since the authorities allowed such chaos, then they have to find an applicable method of resolving the situation.

What type of politics is practiced nowadays? It is the same as was typical for Akaev, policy calling back to





authoritarianism, a clan system, tribalism, feudalism – that is the policy demonstrated by the power now. Priorities and trends towards these interested have remained, perhaps with the addition of two or three new slogans about economic growth. The policy has not changed significantly, and people in power fairly rarely and with great effort utter the words “democracy,” “political reforms,” or “democratic reforms,” which create certain moods among the society.

Therefore, speaking about politics, due to which movement has occurred in our society, then the trend has moved towards liberal policy, despite all deficiencies of the current constitution, which never happened before. If we argue that we had a democratic policy, which was turned into quasi-democracy, and that the concept of “democracy” has acquired a new meaning, then all the contradictions that you mentioned demonstrate that the society has healed towards liberal values. Democratic policy means democratic procedures in the first place, and with democratic procedures it is possible to save and retain any level of power. Hitler came to power via democratic procedures, and Akaev maintained power with them as well. The current governors of Central Asia continue to retain power using democratic procedures and mechanisms. Liberal policy is nevertheless a consensus reached between elites, between the government and the opposition, between the people and the government, because of certain values which, first of all, include protection of the rights and interests of citizens, protection from tyranny, despots, their caprices, etc.

The existence of the deficiencies mentioned here indicates that the mechanism of coordinating interests are enhancing. Tamerlan is right: deputies should tolerate this arbitrariness; they should agree and find mutually-acceptable solutions, or they should break this system, express open protest, throw off the conformism, and come out into a direct conflict with the president. If we had true liberals and social-democrats in our country, then this constitution would indeed have set a time-bomb on future conflicts. However, since our communists resemble liberals more than liberals resemble communists, then it is possible to say that this constitution is capable in terms of conformism, conciliation and mitigating conflict.

There will be certain conflicts between various groups, but they will be forced to sit together at the table of negotiations and seek mutually-acceptable solutions. I am not saying that principles should be traded. There are people who won't trade principles. In general, however, the situation might lead to that stability about which our society dreams. Our leaders cannot find this stability because they are not aware of many things. Thus, the procedures and mechanisms of coordination have not been working here. Politicians should be capable of reaching consensus; the format of round and square tables should be perfected. If these procedures

and formats would have been polished, then the conflict between the power and opposition in November, would have resulted, just as in normal states, in a joint memorandum, where confronting parties state and express their intentions regarding the authorities of the parliament, president, government, etc., whereupon experts would take on the task of clearly and competently drafting a constitution corresponding to the content of the agreement and content of the memorandum. If that had happened, we would not have ended up in such a stalemate situation as we have currently.

What happened also demonstrates that our political elite are hopelessly behind modern demands. In terms of political and economic values and the modernization of civil society, contemporary international trends turned out to be much more advanced than our political elite could grasp, and they have been forced to drag behind global political processes and events. It is disappointing that our political leaders are not suggesting new processes of political modernization, and rather want to preserve the existing regime or go for further reduction of the recent liberalization.

**Muratbek Imanaliev:** Who is in charge now?

**Gulnara Iskakova:** The name of the governmental type does not answer the question of who is in charge. The type of government indicates which one of the two publicly elected bodies bares responsibility for the activity of the government.

**Zainidin Kurmanov:** The head is the president; based on article 42 of the KR constitution, “...the head of state is the highest official in the country.” The government is part of the state, and he is the head of state.

**Muratbek Imanaliev:** There is a difference. If the president is the head of state and head of the executive power at the same time, then it is one political and legal circumstance. If not, then it is entirely different. The U.S., for example, does not have a head of state.

**Galina Mukambaeva:** I agree that many politicians are behind. Theories of the division of power are already the past; at some point the theory of three branches of government was the classic. Based on our constitution, the president is ahead of the other branches of power. Many scientists pay close attention to the fact of who is first in the constitution on the basis of the enumeration of powers to the branches of government. The president still has a place in the constitution, but lacks it in the power division theory. No one has spoken about this until now. I want to say that the president is an independent branch of governmental power. When we draw diagrams for students, I also put the president on top of the legislative branch, controlling, electing, financial branches of power. Already six to seven branches of



power have been added with time. The complication of the functioning of state apparatus led to this development, and we are still talking about three branches of power.

Secondly, according to the constitution of the U.S., for example, the president represents executive power, and he is indeed the head of state. In our republic, the president is head of a separate branch of power that does not relate to the executive branch of power. The constitution has a concept of "authorities," but in theory there is a concept of the "functions" of the branches of power, which flow into the authorities secured in the constitution. He has those functions.

Two opinions exist in this regard. The first is that the president is an independent branch of power, and has his own apparatus. The other opinion is that the executive branch should be structured, and that presidential power and the government should be separated into the highest executive body. Let it be so, but neither the old constitution nor the law about the new edition state that executive power is given to the president, that he is the head of the government as well. Is this good or bad? I think it is good for a society that lives in peace. However, in places where leaders are busy delegating occupations, it is bad when a person concentrates so much power in his hands.

We experienced a family clan, where one person resolved all issues of staff policy in the state. Therefore, to avoid this situation, we opted for the Prime Minister to take on the executive power and head it. It turns out that, based on the old and new constitutions, presidential power is separate from the executive branch of power. Does this mean that we have become a parliamentary state? Until the end of this term, everything has remained the same: the same president and government, as well as the parliament.

Close adherence to classical theory shows that the presidential-parliamentary form of government does not exist. This term was invented to please the president. The constitution of Kazakhstan, for example, openly states that the Republic of Kazakhstan is presidential – and they are not afraid to recognize it. Here, probably, the president is afraid that people will not be happy with the scope of his authorities, as he indeed has many authorities, which one can see in the constitution as well. Therefore, our form was called a "hybrid," as if the president coexists with the parliament. However, we had a presidential form of government, and still have it.

Regarding parties... If none of the parties receives 50% of the seats reserved for party-lists, then the president "identifies a political party from the total number of winners." One legitimate question regards how he will identify a party. Does he select the party as he wants? Indeed, it might happen that a minority will rule over the majority. If opposition deputies

think that they won, then I want to state that they won only mentally, not in the legal field, because nothing has changed. One can draw the conclusion that staff policy will be defined by the president. The constitutional initiative still belongs to the president.

You have initiated this roundtable, and I suggest to expand it and to invite deputies, because we cannot answer all the questions raised here. Then, possibly, we will identify what the form of the government we have is. Let them explain what their victory is, if everything is still the same. Thank you.

**Gulnara Iskakova:** Why does the type of government matter for us? The concept of the type of government is in the complete list of certain characteristics of a consistently functioning system. Government type is identified by the body dismissing the government. Who has the right to do this based on the new constitution? Yes, the parliament can express a vote of no confidence, but the president can disagree. If, in three months, the parliament expresses a vote of no confidence again, then the president can choose to dismiss the government or dissolve the parliament. Besides, it does not matter what efforts the parliament puts into forming the government, because at any point the president can dismiss the whole government upon his own initiative, either the Prime Minister or individual ministers, which means that the government still reports to the president.

**Muratbek Imanaliev:** However, a lot has been said about the government, that the Prime Minister has become more independent.

**Gulnara Iskakova:** In general, the government exists separately from the president in hybrid types of government or in a parliamentary form of government. In presidential forms of government, the government does not exist separately. Rather it is the full responsibility of the president, and it is not called the government but the presidential Administration. We have a hybrid form, presidential-parliamentary. This concept was introduced by two Harvard professors, Shugart and Carey, in their book *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, published in 1992. They researched systems where the president was publicly elected, analyzed the authorities of the president, and came up with the presidential-parliamentary form of government. The authors intended to indicate that the system does not make it clear who, the president or the parliament, is responsible for the work of the government.

This constitution confuses people. We, experts see that all authorities are concentrated in hands of the president in the end, but it might not be clear for people, especially since Members of parliament have been claiming that they won and have more authority now. In fact, the main authorities have remained with



the president, and the system has not changed. What did they fight for, and why did the president resist? The authority of approving the structure of government is missing in the list of presidential authorities, but it is mentioned in other norms and chapters. The same is true about the approval of the chair and deputies of the Supreme and Constitutional Courts. These authorities simply moved from article 46 to the chapter on judicial power. The authorities have decreased visibly, but in fact, they were just moved to other chapters. It resembles Caesar's principle of "divide and conquer."

The parliament will not have a majority, because only half of it will be elected on party-lists, and a majority there can be reached only with a high election threshold, which will be unfair towards parties that cannot claim that they enjoy the recognition and/or respect of the entire nation. A high election threshold also guarantees that those controlling the mass media will win elections, and who controls the mass media here?

Even at a 5% election threshold, none of the parties will gain a majority of those seats reserved for party-lists. There will be at least, four to five parties. For a party to win a majority of seats on the party-list system, the threshold should not be less than 7%. Then, however, it would be an unfair system or produce unfair elections. The constitution provides for what is impossible to implement in reality.

In the case of failed attempts to form the government, the parliament faces the risk of dissolution, and the deputies will decide whether to annul all of their activity and go for dissolution, to go through elections again and end up with the same result, or to go under the president and agree with the recommendations of a party that does not have a majority of seats, possibly only a few seats in the parliament. If, in the end, the president does not like the result, he can dismiss the whole government.

**Muratbek Imanaliev:** What place does the government take in this hierarchy?

**Aida Salyanova:** Out of the three branches of power, the executive branch wins in comparison with the other two, and the president wins in at least several factors. First, the Prime Minister will form the government independently. That stipulation did not exist before, and it is even a positive norm. Second, if in the past the president could independently form executive bodies; now he does not have this right. This development means that any bodies of executive power will be formed only with the participation and acknowledgement of

the Prime Minister. The issue of the National Security Service has been discussed. Now it is under the structure of the government. A series of such authorities indicate the enhancement of the government's position.

The constitution provides the norm that at least 50% of the parliament will be elected by party-list. Therefore, the code can regulate it: maybe it will be 75%, maybe 90%. Usually, legislation can adjust the ratio. The term "at least" was put in the norm to promote party development. Articles 69 and 70, allocated for the government, also indicate the democratic capacity of the new constitution. They speak about the role of parties in general. These articles raise especially hot debates among experts. My colleagues have also touched upon them, but there is one more important aspect regarding dissolution: Let us suppose that party representatives (possibly only three of them) cannot form a government or appoint the Prime Minister. Then, the whole parliament will be responsible for accomplishing it. This is indeed nonsense, because at the end of the norm it is stated that the president can dismiss the parliament. Therefore, in the event of the decision of a minority or the failure of the minority to fulfill their mission by the set deadline, the responsibility falls on the parliament overall, which will be dissolved. Clearly there are norms that require revisions.

**Suerkul Kosakov:** Nothing that we are discussing today will be revised or resolved unless we agree on principles. Ideally, the division of power and system of check-and-balances is related to the fact that it restrains one of the branches of power against the other two (or, in contrast, two against one) to control, etcetera. What does the government represent? It is a system of governmental bodies that were given main functions, i.e. types of activity. These main functions include legislative, executive, and judicial control. As for the president, he has all these functions. How does one correlate the implementation of these functions? Therefore, in order for a branch of power to stay within its scope of functions, the other two should control it. When this balance is broken, one starts prevailing over the others. This principle should guide us while distributing authorities. From the point of view of classical democratic theory, the work of politicians should be directed exactly at this point. Otherwise, it is impossible to create a democratic society. A close look at the U.S. constitution and an analysis of how the power is practiced demonstrates that, although the concept of "power division" is not mentioned anywhere, it is observed. The theory of the division of power appeared in 1787, and it is still developing.



## Recommendations of the IPP for the Structure of the Government and Apparatus of the Prime Minister

The structure of the Government is a very important issue not only from an organizational aspect, but also from the political one. Therefore, forming the structure of the Government must be addressed with great thoroughness and responsibility.

The Institute for Public Policy proposes its own version of the structure of Government. On the one hand, it represents the experience and knowledge of the Institute's leadership, who have work for the Government in the past. On the other hand, it represents our vision and attempt to reform the Government in such a way as would objectively meet the current needs of our country.

### Structure of the Government of the Kyrgyz Republic

#### I. Governing Body (Leadership)

1. Prime-minister (general leadership)
2. Firstviceprime-minister(executivemanagement over the economy)
3. Vice prime-minister (programming social-economic development)

#### II. Services and Committees under the Prime-Minister

1. Revenue and Intelligence Services
2. Migration Service
3. Financial Inspectorate and Accounting Service
4. Committee on fighting against corruption
5. Committee on developing local self-government

#### III. Central Ministries

1. Ministry of Finance
2. Ministry of Foreign Affairs
3. Ministry of Defense
4. Ministry of Culture and Public Relations
5. Ministry of National Security
6. Ministry of Justice

#### IV. Sectoral Ministries

1. Ministry of Energy and Water Resources
2. Ministry of Transport and Communications
3. Ministry of Industry and Trade
4. Ministry of Agriculture and Commodity Production
5. Ministry of Education and Science
6. Ministry of Health and Physical Culture
7. Ministry of Labor and Social Welfare
8. Ministry of Interior Affairs

9. Ministry of Emergency Situations and Nature Protection Systems

#### V. State Agencies

1. Agency on Development of Tourism
2. Agency on Managing State Property
3. Agency on Architecture and Construction
4. Agency on State Purchases and Material Reserves
5. Agency on Geology and Mineral Resources
6. Agency on Intellectual Property
7. Agency on Archives
8. Agency on Drug Control
9. Agency on Statistics
10. Agency on Anti-Monopoly Policy

#### VI. Commissions (Public-State)

1. Commission on Migration and Employment
2. Commission on State Language
3. Commission on Appointment-Making Policy
4. Commission on Youth Policy
5. Commission on Corruption Prevention

#### VII. Academies and Institutes

1. Academy of Management
2. National Institute on Standardization and Metrology

#### Note:

- 1) The authority to register property rights should be given to the Ministry of Justice
- 2) Religious issues should be the prerogative of the Ministry of Culture and Public Relations.



## **Apparatus of the Prime-minister of the Kyrgyz Republic**



### **Commentary**

#### **Ministries**

The structure of the Government is divided into several categories of institutions and departments. First of all, it includes central and sectoral ministries. Why is there a necessity for such a division?

From our point of view, central ministries are the agencies of public administration, which form certain areas (fields). Thus, the responsibility of Ministry of Finance includes not only financing and budgeting issues, but also the formation of economic and financial arenas on the territory of Kyrgyzstan. Such sorts of issues are also included in the responsibilities of the Ministries of Defense and National Security; in other words, the issue is about creating an area of security and, above all, political stability within the country, as well as creating friendly surroundings outside the territory of Kyrgyzstan. This point is also relevant to the Ministry of Foreign Affairs.

The Ministry of Culture and Public Relations is also one of the central ministries. One of the important issues that lie before the people and authority structures of Kyrgyzstan is not only the formation of a culture based on our wonderful traditions and heritage, but also the formation of new culture. Extremely important in this respect is the issue of forming new patterns of behavior, new economic and physical cultures, along with many other cultures in developing our country. The basis of everything that a country and its people can do is culture. The Ministry of Culture is to some degree an ideological ministry, which must consider the issues mentioned above.

As the title indicates, sectoral ministries work on certain sectors. However, the division into central

and sectoral ministries does not mean that the central ministries are the dominating or leading ones.

The Ministry of Energy and Water Resources must be specifically highlighted. Why is there a need to create such specialized ministry today? First of all, energy is one of the foundations of any country today. If there is no energy, then there is no economy! Currently, energy is one of the most important issues in the world economy: all countries, without exception, both developed and developing, are extremely concerned with the issues of energy supply and energy autonomy. Secondly, the main problem of energy in the country is related to its management and development.

The development of the water industry or aqua industry is of current importance to Kyrgyzstan. For this reason, the department is called the Ministry of Energy and Water resources. Why is there an issue about water? We at the IPP believe that water will be the basis of economic development, including the energy of our country. Water is not just a resource, which could be used for agricultural purposes, industrial purposes, and others. In addition though, water also concerns issues of health care, security, and new, innovative technologies connected with water usage. Most importantly however, water is energy. Therefore, we must include the development of the aqua industry or water industry not only in the management system, but also as a scientific basis. We think it would be a great idea to establish a Water Academy. Besides scientific basis, of course, there must be an educational basis, a technological basis, and many other components that are important for the development of the water industry in our country. Today many experts forecast a rise in prices for water and its deficit in the



future; thus, it is time to address this issue seriously.

Health care and physical culture are interrelated very closely, and could be united under one ministry. We need to learn not only how to keep our health, but also how to strengthen it through physical culture. The population of our country must be actively involved in strengthening its physical culture.

### State Agencies and Commissions

The next group is state agencies. Agencies must function, despite their differences from the structures that existed before. Possibly, it is necessary to consider the issue of which agencies would be structural subunits of either central or sectoral ministries. This issue must receive careful research and decision making.

State commissions are extremely important. They must be state-public, or government-public. First of all, it would ensure transparency and openness in discussion of those questions which are the most relevant to our country, including such issues as migration, state language, youth policy, and the prevention of corruption. Secondly, public commissions ensure the involvement of civil society institutes in the processes of management and decision-making at the state level. The commission on appointment-making policy has a special purpose. Recruitment, training, and allocation of specialists have a great role. The slogan "cadres decide everything" had a meaning not only in the Soviet Union, but also in many other countries, including Japan. Human resources are the main resources which guarantee the development of any country.

### The Structure of the Apparatus of the Prime Minister

We need to avoid creating sectoral departments and subunits within the structure of the apparatus of the

Prime Minister which will be separately responsible for agriculture, social issues, industry, and others. The apparatus of prime minister must deal with global issues; it must not be just an apparatus which controls and manages ministries, but must also represent an independent body which develops serious programs for the socio-economic development of our country: forming, adapting, and implementing investment and innovation programs/projects. Another important task is the support and promotion of national business. It is absolutely clear that under the current situation, it will be difficult to ensure the economic development of the country as a whole without developing national business.

On the other hand, such a structure of apparatus makes it possible to strengthen the independence of the ministries and increase the quality of their work. Possibly, donors and international financial institutes might disagree with the idea of creating a department on programming social-economic development. However, we must always remember: planning and programming of not only the development of the entire country, but also that of certain institutes is an important condition which guarantees qualitative development of concrete objectives, as well as the country as a whole.

### Bazarbay Mambetov:

## "Control over water resources is a key element of future power of Kyrgyzstan"

*Due to the latest hot discussions about the price for Uzbek gas and hydro electricity supply to Uzbekistan, the Bishkek Press Club interviewed Bazarbai Mambetov, international expert on power energy, president of the Association of Oil Traders of Kyrgyzstan.*

**Bazarbay Mambetov:** Since the day of our sovereignty, Uzbekistan has been selling natural gas at a special price of 42-50\$ per one thousand of cubes meters. But this year, Uzbekistan stated that they would sell us gas for 100\$ starting from January of next year. Based on my understanding, our government and other official bodies held negotiations but they failed to be successful. Yesterday gas-vending company stated that natural gas bills will increase by six soms for consumers starting from January 1st. Essentially, Uzbekistan wants to get closer

to market prices and is following Russia's example, which also started selling gas at high prices to its partners.

If appropriate negotiation processes were held, then Kyrgyzstan could have put gas supply on a special legal framework since we have many things in common with Uzbekistan, first of all, water. For Uzbekistan, we collect, keep water and in summer provide enormous amount of water via Andizhan, Kirkidon, Papan, and Tortgul water reservoirs. Besides, eight major



channels have been flowing from our territory into Uzbekistan providing water free of charge. These are small water reservoirs and minor channels. The most important, though, is the Toktogul water reservoir which is the Naryn River. For the last 20 years during the vegetation period from April 1st to October 1st we've been providing 7 billion cubes of water in average.

**BPC: At what price does Uzbekistan buy electric energy from us?**

**Bazarbay Mambetov:** During last 3 years, Uzbekistan has not been buying it referring to the fact that previous years were water-abundant; they claim that lateral inflow was sufficient to provide irrigation water for the whole territory of Uzbekistan.

**BPC: In other words, they are not buying electric power from us?**

**Bazarbay Mambetov:** There is an agreement between Kyrgyzstan, Kazakhstan, Uzbekistan and Tajikistan from 1998 about using water-energy resources of Syrdarya River basin wherein the Naryn River flows. Based on this agreement, Uzbekistan and Kazakhstan have to regularly buy annually produced power energy during the period of summer water outflows from Toktogul water reservoir. But Uzbekistan has not been buying it for the fourth year now, i.e., it withdrew from the agreement. Kazakhstan does not buy power on a regular basis either. According to the agreement, Kazakhstan and Uzbekistan must buy 2.2 billion kW/h at 1.1 cent per kW/h. They do not want to buy electricity, but want to continue receiving water.

If they do not buy power from our water reservoirs during summer releases of water, then we can stop producing energy and stop releasing water. To satisfy the electricity needs of Kyrgyzstan during vegetation period (April-October), it is enough to produce just 2.7 billion of kW/h of energy. It is equivalent to releasing just 3 billion cubes of water through Toktogul water reservoir. This water will not be enough either for Uzbekistan or Kazakhstan. To satisfy the water needs of Kazakhstan and Uzbekistan, we have to release from 6 to 7 billion cubes of water during vegetation period in summer, that is, twice as much. We would produce 5 billion kW/h to release 7 billion cubes of water. That is, apart from 2.7 billions of kW/h of power for our own needs, we would have 2.2 billion kW/h, which they should buy from us. If Uzbekistan and Kazakhstan do not buy the energy, thus ignoring the signed agreements, then Kyrgyzstan does not have to release extra water from its reservoirs during summer time.

**BPC: News agencies report that now Uzbekistan is raising prices for gas while demanding us to reduce the price for electric power?**

**Bazarbay Mambetov:** Uzbekistan has not brought

up this issue directly. As an expert, I can say that in past, during vegetation period, we used to sell to Uzbekistan electric power on overcharged prices of 3,34 cents per kW/h, while to brotherly Kazakhstan we have been selling it at 1 cent since 1996.

In order to increase the motivation to buy our cheap electric power during summer, we need to sell to Kazakhstan and Uzbekistan on average for guaranteed prices of 2 cents. That is because the prime cost of produced electric power in Uzbekistan in new Angren hydro electric station is 2,2 cents per kW/h, and prime cost in Djambul hydro electric station of Kazakhstan is 2,3 cents per kW/h. Also, transportation costs and delivery to consumers must be taken into account. Thus, Uzbek and Kazakh electric powers make up 3,5 cents per kW/h for energy consumers.

Kazakhstan and Uzbekistan think that they can always put pressure on us. Especially, Kazakhstan thinks so, suggesting we have no alternative. They think we are not able to keep the water for a long time; therefore, we will let the water out anyway. That is not quite correct though. We can keep all streams of the Naryn River at the cascade of Toktogul water reservoir both during winter and summer periods – and this would not be in the interests of either Uzbekistan or Kazakhstan.

**BPC: Why Kyrgyzstan is selling electric power at higher prices to Uzbekistan compared to Kazakhstan? Is it based on any agreements?**

**Bazarbay Mambetov:** In 1996 the government of the Kyrgyz Republic with the approval of the former president Askar Akaev made such a concession to Kazakhstan. They have decided to sell electric power to Kazakhstan for 1 cent, although in past they had to buy it for 3 cents. In response to that concession, Kazakhstan promised us to supply with Karaganda coal to Bishkek heating and power station for 16 USD per ton, including delivery.

Later, they changed their mind concerning coal prices, but our prices remained as agreed. We are losing greatly on prices, and our talentless management of energy networks is resulting in pitiable situation of Kyrgyz energy system. If in previous times we spoke of magnificence of the Kyrgyz energy system, today we talk about its misery and decline.

**BPC: What are the options for Kyrgyzstan to have effective negotiations with Uzbekistan? How should we work?**

**Bazarbay Mambetov:** First of all, we need to set up regular and constructive negotiations. We need to tell Uzbekistan that we understand its decision on gas prices: the world market conditions have stipulated prices for gas to be high. However, there are many things



that connect us with Uzbekistan besides water. We must reach an agreement in which we would guarantee the water supply to reservoirs and channels along the Rivers Naryn and Syrdariya. In exchange, Uzbekistan should buy energy from us, which is cheaper than Uzbek electricity.

However, considering temporary economic hardships, Uzbekistan needs to understand clearly that 100 USD per 1000 cubic meters of natural gas is quite burdensome for us. Therefore, we need to reach certain agreement with Uzbekistan. If we had some people able to lead such negotiations at the highest level, then I think Uzbekistan would understand us.

**BPC: What could be the consequences of the increase for gas price today?**

**Bazarbay Mambetov:** It would mean collapse of our all prognoses on inflation. Because it means prices for food would increase, then prices for goods of daily usage would also increase; in a line it would affect other sectors. It all would result in new tension in the society, new possibility of protests and many other things. Of course, at one day we will reach world prices for gas, but not today. We are not ready yet; our financial resources do not make it affordable for us.

**BPC: Are there any alternatives for Kyrgyzstan to live without Uzbek gas?**

**Bazarbay Mambetov:** Of course, there are. However, for this moment, we cannot use those alternatives.

**BPC: Why?**

**Bazarbay Mambetov:** Because our government is poor, the treasury is almost empty. Also, we are not able to use unutilized potential of hydro energy resources of Naryn, to build Kambarata-1, Kambarata-2 hydro stations in order to sell energy to all regions. In 2002 we lived for four months without Uzbek gas: it was cut off for non-payment. If there is no gas, we have coal.

In past times, we used to be fairly called “stoker of Central Asia”. Today our state is in poor condition because we do not know how to extract coal in Kyzylkiya, Sulukta cities. We all know what is going on in Kara-Keche. There are many states who cannot afford the purchase of natural gas.

However, on the other hand, if government had enough financial resources and it invited private sector as a partner in extracting oil and gas, we could ease the tension.

**BPC: In one of your interviews to local mass media you said that Toktogul hydro electric station is planned to be closed. Would you please give more details about it?**

**Bazarbay Mambetov:** One thing when a simple person

talks about water resources of Toktogul water reservoir, and it is totally another thing when state official talks about it. Our state representative has said that after one or two years we will stop the operation of Toktogul hydro electric station because we have used all reserved water there.

However, one must not frighten citizens this way. In average during last 25 years the inflow to Toktogul water reservoir via Naryn River was 12,7 billion cubic meters per year, which would mean water outflow would be 12,2 billion cubic meters. Out of it, from April 1 – October 1 in average 7,1 billion cubic meters were released annually. Releasing this water, we used to meet the domestic demand and sell electric energy to Uzbekistan and Kazakhstan. In autumn and winter, we produced in average 5 billion cubic meters per year during these 25 years.

If in summer Uzbekistan does not buy electric energy from us, and backs up from mentioned agreement of 1998, then we can stop producing electric energy for Uzbekistan and supplying this water during summer. Therefore, we could save 3 billion cubic meters which would cover Uzbekistan's territory. It means the water will stay in Toktogul water reservoir both during winter and summer, without decreasing and increasing, with the consideration of inflows and outflows. It would make up approximately 17, 5 billion cubic meters.

If to take world experience, there is an example of Euphrates River. Persians built 20 water reservoirs there, which stay filled up all the year round.

**BPC: You mentioned that we used to release 12 billion cubic meters per year. How much do we release now?**

**Bazarbay Mambetov:** Last year the leadership of our energy companies has been selling energy to Russia almost for nothing. The population of Kyrgyzstan buys electric power from domestic companies for 1,5 cents, and Russia for 0, 65 cents per kW/h. It is unbelievable and unfair!

Thus we kept producing electric power in Toktogul hydro electric station, and letting water out. The main reason why Uzbekistan decided not to purchase electric power during summer time is that it was convinced that we would sell electric power to Russia for 1,5 cents and let the water out. Thus, Uzbekistan could get this water for free. Everything was calculated. Now we have huge debt payable to Uzbekistan for gas, for its transportation via pipeline “Kaztransgaz”. This debt is a result of the fact that Uzbekistan and Kazakhstan stopped regularly buying electric power, which was produced during summer outflows of water from Toktogul water reservoirs. They put political and economic pressure on us.

Recently, there was a business forum in Urumchi, and I was the moderator in the session on the energy sector. Other businessmen were surprised by our approach



in using our energy resources: we have electric power, gas, oil, coal, and we do not want to develop them. We need to work very closely with private sector.

**BPC: In long term how the problems in the energy system could be addressed?**

**Bazarbay Mambetov:** Today the problem of energy sector is a problem of management. The tragedy of our state and government is its inability to provide energy sector with effective management. Forty percent

of produced energy goes to so-called commercial losses. Toktogul hydro electric station works almost for free. Unless we invite private sector to construction of Kambarata-1, ensure effective management of Toktogul hydro electric station and five cascades, we will never be able to establish an order in energy. Kyrgyzstan must have stable water and energy policy in Central Asia. Control over water resources must be seen as a key element of future power of Kyrgyzstan. We must influence the Central Asian politics.

**Roundtable summary**

**Tripartism as a prerequisite for the development of socially responsible business**

On December 12, 2006, the Institute for Public Policy hosted an expert discussion on "Tripartism as a prerequisite for the development of socially responsible business" with the participation of local experts.

The enhancement and development of social partnership between the state, employer, and employee on an equal basis is one of the main requirements for constructive resolution of contradictions between the subjects of social and labor relations. However, there are important questions regarding what necessities and preconditions exist for the development of tripartite relations. Participants of the discussion highlighted that the state has not been playing its role in the development of social-labor relations. For the last five to six years, it has been trying to abandon its function of management instead of setting and protecting adequate rules of the game. The rhetoric about "socially responsible" business has become nothing but an attempt to shift the responsibility from the state to business. The current situation demonstrates that the state lacks, first of all, a clear understanding of the role of business in the state economy, and secondly, a clear understanding of how the state should help and foster domestic business.

It was also stated that the "employer" component in the "state-employer-employee" triad is practically missing in legal terms. The character of the current legislation is coercive and punitive, and does nothing to protect the employer. There is no business index in the country, which is related to the fact that the state has been allowing the "rule of the telephone call" instead of establishing and enforcing standard

and commonly accepted rules of the game.

The introduction and development of tripartite relations would promote the protection and development of business - the main employer and creator of jobs. Only when they are confident about their future can businesses serve as a stimulator of the economic development of the country.

The "employee" component, represented by trade unions ("profsoyuzy"), has not been playing its proper role either. Such unions remain a part of the state, and their activities essentially come down to the protection of their property. Still, it was stated that the very existence of labor unions provides an opportunity, if they are appropriately reformed for an effective representation of employees in the "state-employer-employee" triad.

Experts identified two main challenges for the development of tripartism in the country. Firstly, there is a very weak tradition and culture of social dialogue in the country. Not long ago, the state served as both a regulator of social-labor relations and an employer, while representatives of employee's interests - trade unions - were basically part of the Communist party.

Secondly, in the current situation, in which the state is weak and corrupt, business is vulnerable legally and employees are extremely dependent on employers due to a high unemployment rate. Under such circumstances, there are serious doubts about the readiness of parties to establish and maintain tripartite communication.



## The SCO as a Project for a Zone of Mutual Responsibility and Development

**Muratbek Imanaliev, President of the Institute for Public Policy**

*Excerpt from a report presented by Professor Imanaliev, President of the Institute for Public Policy, at the international conference "SCO: Results and Prospects" on November 30, 2006, Almaty.*

Definition of the Shanghai Cooperation Organization's geographic zone is quite easy – the territories of its member states. However, it is clear that such a geographical definition cannot be considered as the SCO's zone of interests. Obviously, the organization's interests include Central Asia, and possibly the southern adjacent neighbors of Central Asia, primarily Afghanistan. In this context, not only China and Russia have interests in Central Asia, but also the U.S. Furthermore, the interests of China and Russia in other regions of the world do not entirely coincide with the zone of interests of the SCO.

In declarative form, the zone of interests could be considered a zone of the SCO's responsibility. In my opinion, nobody is trying to make a secret of this orientation. The issue is only about the way it is structured in terms of organizational and political principles, and in terms of the aggregation of interests of all SCO member-states.

In the context of the above-mentioned points, the Central Asian states are seen not only as subjects of the organization, but also as objects of the efforts put into the SCO, mainly by Russia and China. Additionally, the SCO has one significant and unique feature – the smaller the country, the less developed (and slower developing) it is, including per capital criteria.

This feature is one of the reasons why the Central Asian states are inclined to consider relations with the U.S. not within the framework of SCO-U.S.A., but in the framework of triadic U.S.A.-China-Russia relations. Such a framework of constructing relations is dominant. Moreover, obvious latent problems in the relations of latter two powers are affecting SCO's operation to a certain degree. Besides, there are some contradictions within the Central Asian states. It is for this reason that cooperation and partnership within the same international organization is accompanied by competition. This tension is not surprising however, as all interstate unions are characterized by the same phenomenon: the European Union, ASEAN, and many others. The question is, what is prevalent both in the activities of SCO itself and of its member-states: common interests, or the preferences of each individual state? Is the SCO a zone of common interests for the security and development of all, or does each member-state fight on its own?

For the time being, along with a certain degree of progress, there are also many problems and contradictions in the activities of SCO.

One of the major contradictions is a conflict over

the declared principles of cooperation, both within the framework of the SCO itself, and with the states and organizations that lie beyond the borders of the SCO and the interests of its participating states.

In particular, there are issues with the well-known SCO principle of openness. It is great that the SCO is building business relations with the European Union, ASEAN, Collective Security Treaty Organization, EvrAzEs, and other international organizations. However, the strange thing is there are no relations with the U.S.A. and NATO. The latter took the responsibility for the development of the situation and, finally, for the destiny of Afghanistan, the country which presents the most acute problems for the security of Central Asia. It is obvious that the security issues of the regions cannot be resolved without America, for the time being at least. Besides, the U.S.A. has established a direct presence not only in Afghanistan, but also in Central Asia.

Each SCO member-state has its own scheme of relations with Washington (even those states which did not want to have any), but the SCO as a whole lacks contacts with the U.S.A., even in the form of basic consultations. Such an approach to partnership with the U.S.A. and NATO complicates the implementation of another declared SCO principle – the principle of corporation or consolidation, especially for Central Asian states. Bilateral Russian-American and Chinese-American negotiations and consultations regarding security in Central Asia have likely been causing bewilderment, if not a sense distrust, among Central Asian states. Also, it is important to take into account that the situation in Afghanistan is worsening (it is known that the Taliban has taken under its control almost 70% of Afghanistan's territory), and I believe that it is in the SCO's interests to begin consultation with America on this issue. It is time for such a step, especially given Washington's interest in building contacts with the SCO.

Also, I would like to say few words about the relations of the SCO with the Collective Security Treaty Organization and EvrAzEs. One might think that such a partnership has meaning. However, the participation of CIS states, all of whom are members of the SCO except Belarus and Armenia, in the Collective Security Treaty Organization and EvrAzEs makes one think that SCO states are negotiating among each other primarily, and then separately with China. In addition, commitments taken by participating states in the framework of the Collective Security Treaty Organization and EvrAzEs have a certain influence on their stance in the SCO.



The only positive aspect is that still there have not been any obvious contradictions or problems in the positions of the Collective Security Treaty Organization, EvrAzEs, and SCO. Such a format of cooperation between the Collective Security Treaty Organization, EvrAzEs, and SCO seems like a protective construction from excessive activeness on the part of China. From the point of view of those CIS countries who are members of the SCO, such an approach might be justified. In that case however, it will be quite challenging to construct a zone of joint responsibility and development within the framework of the SCO.

A separate issue is the admission of new members into the SCO. Apparently, no member-states are against seeing such respected countries as India, Pakistan and Iran enter into the SCO. The important question however is: for what purposes would these countries like to be SCO participants? Accepting the SCO Charter, internal regulations, and program documents of the SCO, are these countries indeed ready for the project of forming a zone of mutual responsibility? Undoubtedly, these issues concern Iran the most, the membership of which would strengthen an anti-American component in the SCO's image, although it is worth recognizing that anti-Americanism is currently turning into a trend – actively spreading in the developing world as a result of the insufficiently thought-out foreign policy of Washington. Are the SCO and each of its participating countries, Kyrgyzstan for example, ready to take responsibility for the nuclear policy of Iran and the possible deterioration of Iran-American relations?

If we consider SCO activities in view of an organizational-methodological sequence and political hierarchy – “intentions-planning-implementation-prospects” – currently, only two aspects are clear and well-defined: intentions and prospects.

1. **Intentions**, both public and unpublicized, are indeed optimistic and transparent. From this point of view, they seem to be relevant and useful for all Central-Asian states without any exceptions. Economic development can progress much faster in close cooperation with such economic giants as Russia and China, which, moreover, have decent political weight, than it could alone or even in a “purely Central-Asian team.”

Active, productive economic cooperation only within the SCO will allow the Central-Asian states to take serious steps in the development of their economies.

2. **Planning** in the economic sphere is complicated by a high level of bureaucracy and excessive regulation of activity, exacerbated by yet-to-be-agreed-upon bilateral relations (in some cases multilateral) on SCO territory.

Excellent and fairly promising projects, including the Business Council, Economic Forum, Interbank Association, Forum for the Scientific Community and other structures of the “secondary echelon” may become shallow and useless accessories to summits if they are not brought to life.

In Bishkek in 2004, SCO members agreed about joining their efforts on 6 priorities: 1) transport, 2) energy, 3) electricity, 4) agriculture, 5) production of household appliances, and 6) light and heavy manufacturing industry. A program for trade and economic cooperation until 2020 was approved.

It is quite obvious that all six of these priorities are, first of all, important for the Central Asian states. However, it is worth recognizing that further promotion of these projects is being impeded by internal contradictions in the uncoordinated stances of SCO countries. The same is true about the activity of the SCO in cultural and humanitarian partnership, as well as in information work.

3. For the purposes of project and program **implementation**, various types of special groups have been created. The latest ones are special groups on the fuel and energy industry and information and communication technologies, formed during the Tashkent meeting. So far, none of these projects have been implemented.

Analysis of the trends in cooperative development (the movement from intentions to implementation) shows a shift from the dominance of common interests at the stage of intentions to the dominance of individual (country) interests at the stage of the implementation.

On August 24th, a meeting of the ministers responsible for the foreign policy of SCO states was held in Tashkent. The main purpose of the meeting was to prepare for the summit of Prime-Ministers. However, aside from declaratory statements touching upon the realization of projects and programs, nothing significant was signed.

At the meeting of Prime-Ministers in Dushanbe, we heard old and new intentions, statements about the need to revive cooperation and about the forms and methods of its implementation. We also heard about bright prospects for trade, as well as for economic and cultural-humanitarian partnership. Still, nothing went beyond these statements.

Meanwhile, activity is more dynamic within bilateral agreements, although it is worth highlighting that the influence of SCO agreements on this type of partnership, though indirect, has been observed nonetheless.

It is obvious that dynamic advancement towards the creation of a mutual responsibility and development zone mainly depends on Russia and China.

The Central Asian states should become more active in the SCO as well; it is necessary not only to express their opinions and intentions, but also to be more active in program implementation. Among all existing and possible future intergovernmental organizations, the Shanghai Cooperation Organization remains the most promising and effective one.



## Certain Aspects of Kyrgyzstan's Foreign Policy in 2006

**Erlan Abdyl daev, Expert of the Institute for Public Policy, former Ambassador of the Kyrgyz Republic to People's Republic of China**

Regrettably, the year 2006 has not become a year of stabilization of the internal political situation in Kyrgyzstan. "Stable instability," heightened political tension was noted as before, the struggle for power continued with the help of various techniques and methods, including "street democracy" and "matryoshka gate", which became internationally known. At the end of the year, in November-December, political tension reached its zenith, having led to unjustifiably swift change of the Constitution, which in the end due to multiple legal conflicts in the new wording of the country's Basic Law and lack of mutual good will among both conflicting sides, led to the resignation of the Cabinet and questioned further existence of the current membership of parliament. These developments on the eve of the New Year again put the country before another political crisis, and the forecasted exacerbation of the situation, which will possibly be accompanied by new parliamentary elections and forming of a new Cabinet, now will obviously leap over into the year 2007.

The political year again vividly demonstrated that lacking real, not formal, political compromise between the authorities, opposition and civil society, lacking a common aspiration for moving forward in the highest interests of the state, not personal, group or clan, the unfolding volatile situation in the country clearly becomes of "chronic" nature, moving from year to year and in the end further postponing the exit of Kyrgyzstan from political and economic crisis.

After the well-known events of March 24, 2005 advanced credit of trust by the international community in the new leadership with Kurmanbek Bakiyev at the head was very high. Still available and not fully spent at present the resource potential of such kind of relations in 2006 could bring Kyrgyzstan quite good political and other dividends on the assumption of competent use as well as strict and constructive demonstration of the most important elements of domestic politics.

Thus, conducting constitutional, administrative, economic reforms by the leadership of Kyrgyzstan during the past year, real reduction of the level of corruption, fight against organized crime, including harsh counteraction to attempts of criminals to integrate into government as well as firm determination to solve other crisis problems could add a significant "capital" not only to the domestic but also to flexible foreign policy maneuvering. However, unfortunately, in 2006 the leadership of Kyrgyzstan, fully preoccupied with the struggle for power, could neither resolve the abovementioned problems nor indicate fundamental approaches to their solution, giving Kyrgyzstan

increasingly an image of an unstable state in the eyes of foreign partners. Lack of predictability and consistency in making decisions on domestic and foreign policy issues by the top leadership of the country is becoming more and more problematic for foreign policy partners.

All year long continuous fierce domestic struggle for power in Kyrgyzstan in certain sense objectively put off solution of foreign policy problems. Activity, determination and effectiveness of the leadership in foreign policy languished, and stability in maintaining and pursuing foreign policy priorities lacked. This circumstance often led to foreign policy discourses which undoubtedly could have a long-term negative impact on relations of Kyrgyzstan with the outside world.

In the unfolding difficult domestic political situation in 2006, under increasing pressure by western states, which expressed certain dissatisfaction with the course of democratic reforms, political leadership of Kyrgyzstan apparently made a forced and perhaps expectable focus on strengthening relations with its traditional and more "familiar" partners, mainly neighbors and CIS member states. At the same time, the Commonwealth of Independent States, Organization of Collective Security Treaty, Eurasian Economic Community, and Shanghai Cooperation Organization (SCO) were named as priority international and regional organizations in statements of the top leadership of Kyrgyzstan. In his address to the people of Kyrgyzstan on September 28, 2006, President Bakiyev said about completion of the work on development of a new foreign policy strategy of the Kyrgyz Republic, which according to him contained the necessary corrections, and suggested to Jogorku Kenesh (Parliament) to adopt it as a law. However, the draft of that document was not discussed in the parliament or released for the public till the end of the year.

Slowdown or, to be frank, rollback of democratic transformations, especially issues around constitutional reform and general democratic values, uncertainty and frequent changes of position regarding the American airbase, expulsion of American diplomats and a general deterioration of relations with the U.S., problems with the Uzbek refugees, periodic criticism on the part of certain politicians of the border agreement with China, the issue of joining the HIPC Initiative, which aggravated by the end of the year, water resources and border problems with neighbors – this is an incomplete list of problems of the Kyrgyz leadership with foreign policy partners in 2006. Moreover, there was a clear lack of unity of opinions of the top political leadership regarding a number of abovementioned problems. However, still more alarming is the fact that



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often domestic and generally natural disagreement in the top Kyrgyz leadership became known to mass media and public long before principled decisions were made, hurting the foreign policy image of Kyrgyzstan

The infirmity of Kurmanbek Bakiev in his office, to the point of potential threat of pre-term resignation from presidency during the course of 2006 under pressure of the opposition, coupled with his pronouncements on foreign policy led to a situation whereby the majority of foreign policy partners of Kyrgyzstan preferred to take a largely wait-and-see attitude by carefully stating their interests or freezing their relations with Bishkek at a marginally sufficient level. It is indicative that in 2006 no delegation headed by a president or prime minister has visited Kyrgyzstan. Heads of states and governments who toured Central Asian states preferred not to visit Bishkek last year.

On the other hand, a number of experts note that a foreign policy direction of "returning Kyrgyzstan home to Central Asia", made by Kurmanbek Bakiev in the beginning of his presidency, started getting realized but, unfortunately, in a negative manner for Bishkek. The realm of foreign policy for President Bakiev within this framework really starts narrowing down to relations with the Russian Federation, Central Asian neighbors, certain CIS member states, and as an exception, with Iran and Turkey.

Activity of Kyrgyzstan at present in other important directions – American, European, and Asian – could hardly be called positive and effective. Further mechanical and one-sided adherence to realization of the abovementioned, in principle, explainable direction on the part of Bishkek could lead to destruction of the balance of interests of outside forces in Kyrgyzstan, falling into dependence from one pole, which could eventually lead to the loss of independence in foreign affairs.

A tendency of Bishkek's departure from the policy of multiple vectors and transition to domination of primarily one – northern – vector in foreign policy orientations and personal passions of the top leadership could be observed today.

Notwithstanding persistent efforts of the Kyrgyz leadership and personally President Bakiev on rapprochement with the foreign policy partner number one – Russia, Kyrgyz-Russian relations regrettably did not develop further. The parties, primarily the top leaders, most likely still could not overcome the syndrome of non-fulfillment by the Kyrgyz side of its promises, in particular, "the Astana statement of the Shanghai Cooperation Organization" (July 2005) on the American airbase. On the eve of his first official visit to Russia in April 2006, President Bakiev made an attempt to remedy the situation and win back sympathies of the Russian leadership by once again laying down the U.S. a rigid ultimatum on significant raise of the rent for

the airbase or its withdrawal. However, Moscow treated this gesture of Bakiev in a rather lukewarm manner, and immediately reacted through Yuri Baluevsky, Chief of the Joint Staff of the Russian Defense Ministry, who said that Russia does not view deployment of the American airbase in Kyrgyzstan as a problem. According to official information of both sides, the main goal of the visit of President Bakiev to the Russian Federation, which took place in April 24-25, 2006, was to elevate "bilateral relations to a qualitatively new level – concrete definition of mutually beneficial cooperation, primarily in the trade and economic sphere." It was also reported that during the visit there was a discussion of realization of specific business projects in oil and gas sphere, power engineering, transport with participation of major Russian companies, as well as the topic of cooperation in the sphere of migration and interaction in the sphere of culture and humanities. However, no breakthrough agreements or contracts were signed in the abovementioned spheres; the parties did not go beyond protocols of intentions. By the end of 2006, realization of the abovementioned protocols important for Kyrgyzstan's economy was not observed. Interests of Russia, not Kyrgyzstan, were reflected in the joint document signed as a result of Bakiev's visit to Russia, especially in the section dealing with the military presence of Moscow in Kyrgyzstan, which is apparently the main interest and a structural element of the entire Russian policy in Kyrgyzstan.

During the past year there were visits of Russian Defense Minister Ivanov, Head of the Russian Agency for Atomic Power and Co-Chair of the Russian-Kyrgyz Intergovernmental Commission Kirienko to Kyrgyzstan as well as the visit of Prime Minister Kulov to Moscow. However, they also did not bring about any progress in trade, economic or other directions of cooperation between Russia and Kyrgyzstan.

A new irritant in Kyrgyz-Russian relations has suddenly emerged in the middle of the last year. There were reports in Kyrgyz mass media about supposedly transient visit of Boris Berezovsky in Bishkek and his meetings with some Kyrgyz officials. Notwithstanding denial by official Bishkek and personally Bakiev of the fact of the visit of President Putin's major opponent to Kyrgyzstan, Russian Office of Prosecutor General confirmed this fact, which obviously did not promote establishment or restoration of mutual trust between leaders of two states.

Developments around the American airbase and Kyrgyz-American relations in general in 2006 were noted by experts as the most significant, and which had a substantial influence on relations of Kyrgyzstan with other foreign policy partners during the last year. Given the lack of economic interests in Kyrgyzstan, virtually zero commodity turnover and American investments, U.S. interests in the country mainly lie in the military-political sphere and promotion of democratic reforms.



For Washington, the American airbase at "Manas" airport is a key element of not so much American-Kyrgyz relations but rather US military-political interests in the entire Central Asian region. This is what most likely explains the significant restraint showed by the U.S. during repeated changes of positions of the Kyrgyz leadership on this issue, including an ultimatum made in April 2006 on revision of the agreement regarding the terms of the deployment of the airbase. Negotiations initiated by Bishkek with the US on further use of the airbase in "Manas" airport by the forces of the Anti-Terrorist Coalition in Afghanistan were completed in July 2006. Upon the completion of negotiations Miroslav Niyazov, Secretary of the Security Council of Kyrgyzstan and James McDougall, Deputy Assistant for the U.S. Defense Minister signed a protocol, according to which the U.S. is going to provide over 150 million USD as a general assistance and compensation during the next year after ratification by the U.S. Congress. However, this issue is not completely resolved and still will remain the main issue on the agenda of Kyrgyz-American relations in 2007.

The "cold spell" of bilateral Kyrgyz-American relations was also affected by a sudden declaration of two American diplomats persona non grata in the second half of the last year. The murder of a Kyrgyz citizen in "Gansi" airbase in early December, which caused a justified indignation of the Kyrgyz public, served a final blow to the Kyrgyz-American relations in the last year.

At this state, Kyrgyz-American relations will have to withstand serious tests in 2007, and their adjustment apparently will require quite serious efforts on both sides, and desire and capability of the leadership of two states to take into account each other's interests.

The state visit of President Bakiev to the People's Republic of China, which reflected all problems and nuances of the countries' relations during the last year, became the main event in Kyrgyz-Chinese relations in 2006. Expectations of Beijing regarding the visit were connected primarily to the political component of the cooperation. The top Chinese leadership tried to clarify as much as possible not only the position of President Bakiev regarding key issues of bilateral relations, regional and international politics but also its firmness and invariability in the long term. In general Beijing was interested in the possibility of restoring the atmosphere of political trust between the leadership of two states, which staggered to a certain degree after events of March 24, 2005. In Kyrgyz-Chinese relations, the level of political trust between the top leaders and the extent of cooperation in the sphere of security have always defined and will define the dynamics of relations in other spheres, primarily in trade and economic sphere, realization of major economic projects.

Acknowledgement of continuity and firm adherence of the new Kyrgyz leadership to earlier accords and agreements, primarily of political essence, including the

settlement of border issues were the main elements of Bakiev's visit to PRC. Official statement of Kyrgyzstan's new President during the visit about firm adherence to all the hitherto concluded accords and agreements, including the border agreement, despite domestic opponents, was viewed by Beijing as a significant step towards restoration of the atmosphere of political mutual trust.

The issue of American military presence in Kyrgyzstan in immediate proximity to Chinese border was also an important aspect on the political agenda of negotiations of Bakiev in Beijing. During the visit the Chinese leadership unambiguously advocated determination of time limits for the deployment of the American airbase in "Manas" and against expansion of its mandate beyond the framework of the anti-terrorist operation in Afghanistan. Apparently, Beijing managed to persuade the Kyrgyz side in validity of its position and enlisted its support. Regarding this issue in the joint final declaration, the parties stated that they "will not allow third countries the use of their territory to the detriment of the state sovereignty, security and territorial integrity of the other side, and will not allow creation and activity on its territory of organizations and associations which pose threats to sovereignty, security and territorial integrity of the other side."

The economic component of President Bakiev's visit to PRC by any measure was not the main one on the agenda of negotiations, and as a result, despite statements of certain Kyrgyz politicians, no breakthrough decisions were made in this regard. China, which does not view Kyrgyzstan as a priority economic partner in the region, restricted itself to giving a traditional grant worth 70 million yuans to support the Kyrgyz economy and a government loan for the construction of a cement works in Kyzyl-Kia, a town in the south of Kyrgyzstan. As for the priority economic projects for Kyrgyzstan – construction of a China-Kyrgyzstan-Uzbekistan railroad and export of Kyrgyz electric power to PRC, which have been at the stage of studies and discussion for the past years, the Chinese leadership as it was assumed suggested to additionally study them, which could mean that at present there is lack of interest in their implementation on their part.

In general President Bakiev's visit to PRC was largely political and was aimed at completing the protracted pause in Kyrgyz-Chinese relations, which appeared after March 24, 2005. Notwithstanding absence of breakthrough decisions in the economic sphere, which would be highly unrealistic at present, it should be acknowledged that the goal – restoration in a certain sense of the political trust between the leaderships of two states – in principle was achieved, and could be considered as the most important and main result of Bakiev's visit to China.

Official visits of President Bakiev during the last year to the states of the Central Asian region – to Kazakhstan (July) and Uzbekistan (October) – were of significance to



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him from the point of view of acknowledgement of his status as a new legitimate leader of a neighboring state by the political elites of Kazakhstan and Uzbekistan. The stated goals of the visits – stimulation and solution of problems in bilateral political, trade, economic and humanitarian relations – in general were not achieved. Water, fuel-energy, border, migration, property and a number of other bilateral problems with Kazakhstan and Uzbekistan could have been hardly resolved during one visit. According to estimates of experts and participants of negotiations, both visits were mainly about “overture” of positions and search for possible compromises. At the same time, following an established tradition upon completion of a “successful” visit to Uzbekistan, the Kyrgyz side received a notification from Tashkent on raising gas prices in 2007 approximately by 50%.

Relations of Kyrgyzstan with other foreign policy partners – EU member states, Japan, Asian and Arab states – in 2006 were not active and remained at the previous level. During the last year the parties exchanged seldom visits, the highest level being ministerial.

Positions of Kyrgyzstan during the past year within the framework of multilateral diplomacy in general remained without changes. The attitude towards the HIPC Initiative, UN reform, and chairmanship in the Shanghai Cooperation Organization could be noted as the most important issues for the leadership of Kyrgyzstan in international and regional organizations in 2006, and which could influence both positively and negatively domestic and foreign policy position of Kyrgyzstan. The final decision on the first issue, which caused heightened tension in the country, has been postponed to March 2007; however, judging by the statements of the prime minister and key ministers, the issue has been basically resolved in favor of joining the Initiative. Regarding the second issue, during the last year mainly China and Japan, whose interests clashed over UN

reform, tried to put pressure on Bishkek with the aim of getting hold of its vote when it comes to voting. Voting on the UN reform has been postponed to a later date, which however does not eliminate the issue of making a difficult decision by the Kyrgyz leadership in favor of one or another option for UN reform, which reflect interests of key world powers. Chairmanship in the Shanghai Cooperation Organization and accordingly hosting the next summit of the heads of states in 2007 has passed on to Kyrgyzstan according to the organization’s Charter by way of rotation in alphabetical order. Kyrgyzstan is given a good chance this year to promote its interests within the organization, improve bilateral relations with members and observers of the Shanghai Cooperation Organization and try to show Kyrgyzstan favorably to the entire world during the days of the work of the Summit.

In conclusion it should be noted that the entire sequence of events which took place in Kyrgyzstan in 2006 again confirms that under an impaired and unstable leadership, stagnating economy and general unsteady internal political situation in the country, there cannot be a strong and purposeful foreign policy. All of the above negative factors were present in Kyrgyzstan during the last year. At this juncture, President Bakiev made efforts of maneuvering on foreign policy field, which was getting narrower as a result of his politics, trying to enlist support of above all Russia and China as well as the next-door neighbors with the aim of strengthening his positions as a legitimate President of Kyrgyzstan and solving internal economic problems of Kyrgyzstan. However, it should be admitted that from the point of view of the immediate and medium-term future, President Bakiev’s last year stake on preferred development of relations with one pole – Russian Federation could hardly compensate sharply defined cold spell in relations with western countries, primarily with the U.S. in 2006. Taking this into account, not many achievements in the sphere of foreign policy in 2006 could be claimed by President Bakiev.

## Roundtable summary

### Management of Water Resources in Kyrgyzstan

*On December 15, 2006, the Institute for Public Policy hosted a round table on “The Problems of Water Resource Management in Kyrgyzstan.” Turdakun Usubaliev, former chairman of the Kyrgyz Communist Party, Duishen Mamatkanov, director of the Institute for Water Issues and Hydroelectric Energy, Bazarbai Mambetov, President of the Association of Oil Traders and Former Deputy Prime Minister, and Jumakadyr Akeneev, Professor of Economics at the Kyrgyz National University and Former Minister of Agriculture and Water Resources were invited as speakers.*

The discussion was summoned in light of an increasingly tense situation in the energy sector, continuing disputes about the role of water resources in geopolitics, the increasing engagement of external players interested in the water-energy complex of the country, and the obvious absence of a clear and coherent strategy on the part of the government in this sphere.

regulation of the joint usage of water resources by Central Asian states, in particular Kyrgyzstan, Kazakhstan and Uzbekistan. Currently, about 75% of the waters of Syrdarya River are formed on the territory of Kyrgyzstan, while it uses only 10% of them, which makes up about four billion cubic meters of water.

The experts pointed out that the main issue is

“Based on international conventions, Kyrgyzstan has the right to thirteen billion cubic meters of water,



twenty billion cubic meters if we include household and industrial use,” stated Duishen Mamatkanov, Director of the Institute for Water Issues and Hydroelectric Energy.

A separate issue is the compensation of expenses to Kyrgyzstan for maintaining water-irrigation facilities of regional importance. Based on the information of Turdakun Usubaliev, the maintenance of the irrigation systems costs twenty-five million USD (based on the prices of 2001), ten million of which is Kyrgyzstan’s share, while fifteen million should be covered by Uzbekistan and Kazakhstan. The construction of the Toktogul water reservoir flooded twenty-eight thousand hectares of land, but, as Duishen Mamatkanov noted, “we have received nothing from our neighbors, and we pay forty-six million soms to Toktogul raion as partial compensation.”

The 2001 law of the Kyrgyz Republic “On intergovernmental use of water resources and water facilities of the Kyrgyz Republic” enshrines the state’s right of property on water resources and water facilities within its territory, and stipulates the funding of intergovernmental water programs on a parity or cost-share basis. As Turdakun Usubaliev stated, while Kazakhstan recognizes the legitimacy of this law, and has even paid compensation at some points, Uzbekistan continues to reject it.

Another important component of the problem is the lack of a strategic policy on the part of the state

regarding the management of water resources. The President of the Oil Traders’ Association of Kyrgyzstan, former Deputy Prime-Minister Bazarbai Mambetov, stated that Kyrgyzstan is losing its weight in Central Asia only because it cannot wisely use its resources.

A National Council on Water and Energy was created in May 2006, involving several well-known experts in the field, specifically for the development of a state strategy in the water-energy sphere. However, the first meeting on May 4, 2006 turned out to be its last meeting, as the Council was abolished by a presidential decree.

Another issue is absence of a single body responsible for managing water resources. The water resources of Naryn and Syrdarya are managed by the open joint stock company “Electric Stations,” while small rivers belong to the department of water economy within the Ministry of Agriculture, Water and Processing Industry. As an example, Professor Jumakadyr Akeneev noted that negotiations on gas prices with Uzbekistan are led by representatives of Kyrgyzgas, who have no affiliation with water and energy issues, though it is clear that gas supply is closely related to water and energy for Kyrgyzstan.

Participants of the round table came to the conclusion that development of a clear water management policy requires a continuation of discussions on this issue in a wider circle of experts.